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VOLUME I.

TRANSCRIPT OF RECORD

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1952

No.

ST. JOE PAPER COMPANY, ET AL.,
Petitioners,

VERSUS

ATLANTIC COAST LINE RAILROAD COMPANY
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA,
UNITED STATES COURT OF APPEALS, FIFTH
JUDICIAL CIRCUIT.

PLEAS AND PROCEEDINGS had and done at a regular term of the United States Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D. 1952, before the Honorable Joseph C. Hutcheson, Jr., Chief Judge, the Honorable Edwin R. Holmes, the Honorable Wayne G. Borah, the Honorable Robert L. Russell, and the Honorable Richard T. Rives, Circuit Judges:

IN THE MATTER OF FLORIDA EAST COAST
RAILWAY COMPANY, Debtor,

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,

versus

ST. JOE PAPER COMPANY, ET AL.,
Appellees.

BE IT REMEMBERED, That heretofore, to-wit, on the 2nd day of July, A. D. 1952, a transcript of the record in the above styled cause, pursuant to an appeal from the United States District Court for the Southern District of Florida, was filed in the office of the Clerk of the said United States Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Court of Appeals in Volumes I, II., and III., as No. 14163, as follows, to-wit:-

Volume I—Pages 1 to 236, inclusive

TRANSCRIPT OF RECORD

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No.

In the Matter of

FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

ATLANTIC COAST LINE RAILROAD COMPANY,
Appellant,

versus

ST. JOE PAPER COMPANY, ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Florida

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(ORIGINAL RECORD RECEIVED JULY , 1952)

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INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

Submitted December 15, 1950. Decided July 12, 1951

Upon further hearing and reconsideration, a modified plan of reorganization for the Florida East Coast Railway Company, pursuant to section 77 of the Bankruptcy Act, as amended, approved.[1]

Appearances as in prior reports and, in addition, *Robert N. Lowry*, *Jerome C. Hofmayer*, *Henry L. Walker*, *George W. Ericksen*, *Robert M. McCulloch*, *Charles N. Schenck III*, *George F. Meister*, *David W. Dyer*, *John G. Thompson*, *Richard J. Flynn*, *Edward J. Hickey, Jr.*, *Max Siskind*, *S. H. Moerman*, *Ridley Whitaker*, *Lewis W. Petteway*, *D. Fred McMullen*, *Guyte P. McCord, Jr.*, *Chester Bedell*, *Clifton S. Thomson*, and *James B. McDonough* for interveners.

FIFTH SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

In our third and fourth supplemental reports and orders of April 8, 1947, and March 25, 1948, 267 I. C. C. 295 and 729, we approved a plan of reorganization of the Florida East Coast Railway Company and certified such plan to the court. On January 17, 1950, the United States Circuit Court of Appeals, Fifth Circuit, handed down an opinion[2] affirming an order of the United States District Court for the Southern District of Florida, filed January 22, 1949, disapproving our plan.[3] Thereafter petition for a writ of certiorari filed by the Atlantic Coast Line Railroad Company was denied by the United States Supreme Court on April 3, 1950.[4] A mandate from the court of appeals was filed in the district court on April 14, 1950, and in accordance with subsection (e) of section 77 of the Bankruptcy Act, as amended, the proceedings were referred back to us for further action. Under the afore-mentioned provision of the statute we are required to proceed to a reconsideration of the proceedings under subsection (d) of section 77 which contains the provisions relating to the initiation of bankruptcy proceedings before us, the filing of plans,

[1] Previous reports: 252 I. C. C. 423 and 731, 254 I. C. C. 865, 261 I. C. C. 151 and 860, 267 I. C. C. 295 and 729.

[2] *Atlantic Coast Line R. Co. v. St. Joe Paper Co.*, 179 Fed. (2d) 538.

[3] *In Re Florida East Coast Ry. Co.*, 81 Fed. Supp. 927.

[4] *Atlantic Coast Line R. Co. v. St. Joe Paper Co.*, 339 U. S. 929.

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the holding of hearings, and approval by us of a plan of reorganization. As required by the statute the district court transmitted to us a copy of all evidence received by it at its hearing on approval of the plan.

Accordingly, we assigned the proceedings for further public hearings which were held on July 11–14 and August 8–17, 1950. By agreement of the parties at the hearings, a proposed report by an examiner of the Commission was waived, briefs and reply briefs were filed by the parties, and oral argument held before us.

Parties intervening in this proceeding since the issuance of our report and order of March 25, 1948, are the president and directors of the Manhattan Company and J. Bryson Aird, as successor trustees under Florida East Coast Railway Company first and refunding mortgage, W. G. Welbon, John W. Snyder, and A. W. Corbett, Herman Hamel, W. R. Huggins, R. T. Jeffries, W. T. Keebler, R. L. Musselwhite, H. K. North, John P. Smart, and O. R. Stroman, and the Florida Railroad and Public Utilities Commission.

In this report the abbreviations will be as in former reports in this proceeding.

The decisions of the district court and court of appeals disapproving the former plan.—In disapproving the plan which we approved, the district court, among other things, held that the matter of compatibility of a plan with the public interest is left by the statute to us for decision and is not to be reviewed by the court.

The district court concluded that Congress in enacting section 77 did not intend to give the Commission power to force a merger of railroad properties (as was provided for in the disapproved plan) contrary to the wishes of a majority in amount of the affected parties, by permitting a merger to be a part of a plan, and that the plan should be disapproved, if lawful, because "it is testified under oath and is plainly apparent that it will be rejected almost unanimously by the refunding bondholders."

The district court held that certifications by us of value of a debtor's property are in general final if the legal standards are observed but that the court has, by statute, the right to make an independent investigation in order to be satisfied as to the equitableness of a plan and is not bound by our conclusions as to such matters. The district court stated that, "while deferring to the finding that the valuation of the railroad property as fixed by the Commission is equalled by that of the Coast Line securities, I am impressed that evidence produced before me, if it had been before the Commission, might have produced a different result."[5] The district court found the treatment accorded

[5] This evidence is now before us, the transcript having been certified to us by the clerk of the court pursuant to the provisions of section 77.

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the first and refunding bondholders under the plan was not fair and equitable and did not afford due recognition of their rights.

Upon appeal, the court of appeals held that "a plan providing for what the trial judge broadly called a 'forced merger', that is, a merger over the objection of the debtor and all its creditors," may be lawfully certified to the court and lawfully approved and confirmed by it. As to this point two of the judges of the circuit court (i. e., the judge who rendered the majority opinion and the judge who dissented) were in agreement, while the concurring judge dissented.

As to the district court's holding, above stated, that the plan should be disapproved, if legal, because of the evidence that upon submission it will be rejected almost unanimously, the court of appeals held that normally this matter is not reached until time for confirmation of the plan and that technically the trial judge made an anticipatory ruling on a matter not then before him.

The court of appeals in its opinion criticized the "tremendous overemphasis on and the preoccupation of the Commission with the struggle on the one hand of the St. Joe Paper Co., and on the other of Coast Line for control of the debtor with its subordination of the primary question of the legal and equitable rights of the bondholders as such." The court considered that this overemphasis and preoccupation required the district court to subject the proceedings to the closest scrutiny to determine whether, aside from control, the plan was fair and equitable to the bondholders. The district court held that a plan should provide "protection of private and public interests without sacrifice of each to the other." The court of appeals found that the disapproved plan did not meet these tests.

In remanding the case the court of appeals said:

> In remanding the case, however, for further proceedings, we remand it for the purpose of working out a really fair and equitable plan and without prejudice in doing so to the due consideration of any fair and equitable plan for bringing this matter to an end, including such a plan providing for a merger with, or sale to, the Coast Line either with or without the approval of the security holders.

PLANS OF REORGANIZATION PROPOSED BY PARTIES

Prior to or at the hearings in 1950 proposed plans for reorganization of the debtor were filed by the following parties:

(*a*) *Revised plan submitted by St. Joe Co.*[6]—This plan proposes a capitalization of $45,000,000, exclusive of equipment obligations which would be assumed by the reorganized company and which on December 31, 1949, amounted to $5,314,086. The capitalization would be represented by new first-mortgage fixed-interest 50-year, open-end, con-

[6] The revised plan as filed was amended or supplemented by the St. Joe Co., on brief, and reference to it in this report will be as so amended.

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vertible (into common stock) 4-percent series A bonds, to be dated as of the effective date of the plan, and new common stock, the stated value of which would be fixed by the reorganization managers but could not exceed $100 per share, each share entitled to vote at all corporate meetings with the right of cumulative voting. The effective date of the plan would be the date of consummation or as near thereto in advance thereof as the reorganization managers with the approval of the court shall be able to determine. Upon consummation date all property and franchises of the debtor should vest in the reorganized company free and clear of all liens and charges of every kind, except as expressly provided in the plan.

The outstanding first-mortgage bonds of the debtor would be paid in cash. Holders of allowed unsecured claims would be paid in cash out of a total sum equal to the value of any "free assets" of the debtor, and all the new first-mortgage bonds issued in the reorganization (series A) would be allotted to holders of the debtor's now outstanding first and refunding mortgage 5-percent bonds ($45,000,000, principal amount outstanding with $36,000,000 accrued defaulted interest as of September 1, 1950) under three alternative options as follows:

	Principal amount of first-mortgage bond for each $1,000 first and refunding bond	Stated value of common stock for each $1,000 first and refunding bond
First election	None	$1,000
Second election	$500	500
Third election	$1,000	None

The St. Joe Company, its successors and the assigns of all the debtor's first and refunding bonds held by it would be irrevocably pledged to the other first and refunding bondholders to elect to receive stock only. The St. Joe Company, together with the Alfred I. du Pont Testamentary Trust, owns $25,000,000 of the first and refunding bonds. Thus, not more than $20,000,000 of new first-mortgage bonds would be issued in the reorganization, the remainder of $25,000,000 of the new capitalization (exclusive of equipment obligations) being represented by stock. The exact amount of stock and bonds to be issued at reorganization would depend upon the exercise of the above options.

The new first mortgage would constitute a direct first lien, subject only to liens on equipment, upon all the properties and assets of every kind of the reorganized company, except cash and current assets owned at consummation date, necessary or incidental to the operation of the railroad, and also upon after-acquired property.

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Among other things not already described, the mortgage would provide that:

(*a*) The principal amount of bonds to be issued thereunder would be unlimited except as provided in the mortgage or by law.

(*b*) Bonds secured by the mortgage could be issued from time to time in different series subject to such limitations and restrictions as may be specified therein and to such conditions as at the time of issue may be made by the reorganized company or imposed by the authority of law, but, with respect to the lien of the first mortgage, all bonds of all series would be equally secured.

(*c*) First-mortgage series A bonds, in a principal amount exceeding $20,000,000, would be authenticated and delivered in the reorganization in an amount sufficient to provide for the consummation of the plan.

(*d*) Additional series could be issued from time to time subject to such limitations and restrictions as shall be specified in the mortgage, consonant herewith, and subject to such authorization or approval by competent authority as may from time to time be required by law; provided that such additional bonds may not be authenticated or issued by the reorganized company to provide for or reimburse it for expenditures for additions or betterments to its property (1) which were paid for out of the cash reserve specified in the plan, or (2) in an amount in excess of 75 percent of the amount properly chargeable to capital account of all other such expenditures. The series A bonds would:

(1) Be redeemable at their principal amount and accrued interest, in whole or in part, at the option of the reorganized company on any interest-payment date, upon 60 days' notice, as provided in the mortgage; provided, that the bonds would be callable during the first 5 years following the effective date of the plan only for refunding into a subsequent series of bonds, which series shall provide that the refunding bonds issued during such 5-year period shall be redeemable, convertible, and have the voting privileges, if any, provided in series A bonds. The holder of a series A bond which is called for redemption within said period of 5 years shall have the right to exchange such bond for a bond of like principal amount of the new or refunding series.

(2) Be convertible at the office of the reorganized company at any time prior to their redemption or payment by the company whether before or after notice of redemption has been given by the company, upon reasonable notice to be fixed in the mortgage, into shares of common stock at the rate of $1,000 stated value of common stock for each $1,000 of principal amount of such bonds.

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Cash in the debtor's treasury would be appropriated from time to time on or before consummation date, upon order of the court, for payment: (*a*) Of matured and unpaid obligations of the trustee including all expenses of reorganization and of the prior receivership proceeding and all claims for compensation and expenses therein; (*b*) of claims entitled to priority over the debtor's mortgage bonds and not assumed by the reorganized company pursuant to the plan; (*c*) of principal and accrued and unpaid interest to date of payment of the debtor's first-mortgage 4½-percent bonds; (*d*) of any amount due holders of unsecured claims; (*e*) to the reorganized company of the amount of the foregoing payments not made by the trustees plus $3,500,000 in cash which shall constitute and be treated as paid-in cash capital of the reorganized company; (*f*) of the remainder pro rata to holders of each maturity of matured and unpaid interest coupons of debtor's refunding bonds, beginning with the earliest maturity.

The reorganization managers would be three in number, all to be appointed by the court, one to be a trustee of the debtor's estate, one a holder of first and refunding mortgage bonds of the debtor selected by the court and not connected with the St. Joe Company, and the third to be selected by the St. Joe Company.

The first board of directors of the reorganized company would consist of not less than 11 members all to be persons selected by the reorganization managers with the approval of the court. They would serve until the first stockholders' meeting which must be held not later than 60 days after consummation date.

Attached to and made a part of the plan is a condition as follows:

The acceptance of this plan of reorganization by the St. Joe Company and the Alfred I. du Pont Testamentary Trust and the exercise of any of the rights accruing to either of them by reason of the receipt of capital stock of the reorganized company in exchange for present securities of the debtor, in all future proceedings judicial as well as administrative, including this proceeding, to which any of the parties hereto may be parties, shall be deemed and taken as conclusive evidence of their acceptance and agreement to abide by the condition that the reorganized company, the St. Joe Company, the Alfred I. du Pont Testamentary Trust and either of them, their respective trustees or officers and directors, unless and until otherwise authorized by order of the Commission, so far as it lies within their respective powers so to do, shall:

1. Preserve the existing routes and channels of trade and commerce between the lines of other carriers and the lines of the debtor;

2. Maintain existing gateways for the interchange of traffic with such carriers;

3. Maintain complete neutrality as between such connecting lines in handling traffic, inbound and outbound, by the debtor or the reorganized company;

4. Preserve and maintain equal service and routing for service and routing or movement of traffic to and from said connecting lines without preference or discrimination in service, rates, divisions or solicitation;

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5. Maintain the line of the debtor as an open route equally available to all carriers connecting with it at Jacksonville, Florida; and

6. Refrain from influencing or attempting to influence by any means whatever the routing or movement of the traffic of any third person which originates or terminates on the line of the debtor insofar as such routing or movement is north of Jacksonville, Florida.

On brief the St. Joe Company states that, while not adopting or considering proper certain other provisions suggested by other parties for inclusion in its plan, it would consent to their inclusion if we so prescribe. These provisions are as follows:

(a) Provision for annual one-half percent per annum bond sinking fund payments, (b) funding of expenditures made by the debtor's trustees for extraordinary additions and betterments between date of approval of the plan, and consummation date, and (c) a provision to give each registered holder of $200 principal amount of the new series A first-mortgage bonds the right to one vote at corporate meetings and elections after default in any interest payment and as long as the default continues. Such voting right would be cumulative.

(*b*) *Coast Line modified plan.*—The Coast Line's modified plan, which would merge the debtor's properties into those of the Coast Line, is similar in corporate structure to the disapproved plan which also provided for the merger, but contains some important changes. No effective date is fixed, but provision is made that the recipients of the new securities to be issued under the plan would be entitled to receive the same amount of cash and the same rights in respect of accruals and accumulations of interest or dividends on the new securities as if they were dated January 1, 1950. Furthermore, the amounts of the cash reserves to be set aside out of the debtor's estate to be expended for additions and betterments, reorganization expenses, and working capital are to be considered as allocated as of January 1, 1950, and any subsequent expenditures by the debtor's trustees for such purposes between that date and date of consummation of the plan would be deducted from the reserves. Also the amount of the debtor's cash, if any, payable to the debtor's creditors on consummation date would be on the basis of "adjusted net current assets" of the debtor calculated as of January 1, 1950. These reserves and cash payments will be discussed later.

Following is a statement of the cash and new securities offered by the Coast Line under the plan for the debtor's properties if transferred to it free of all liens (except equipment obligations) including the liens of its first mortgage and first and refunding mortgage and the liens in favor of the holders of the debtor's first and refunding mortgage bonds imposed by court orders Nos. 588, 595, 662, 703, 705, 707, 765, and 791 (to be discussed later in this report) in respect of certain capital expenditures by the trustees of the debtor authorized by the court subsequent to December 31, 1945, which were not covered by the cash reserves provided for in the disapproved plan.

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For comparative purposes the consideration which was to have been paid by the Coast Line for the debtor's properties under the disapproved plan is shown below together with that now offered by the Coast Line under its modified plan, in both cases all equipment obligations of the debtor being assumed as of consummation date.

Coast Line modified plan		Disapproved plan	
Coast Line, first-mortgage fixed-interest, divisional, 3¼-percent, 25-year bonds	$13,500,000	Same except 3½-percent interest rate	$13,500,000
Coast Line general mortgage income divisional 4½-percent 75-year bonds	9,000,000	Same	7,875,000
Coast Line participating cumulative $100 par-value convertible 4-percent dividend preferred stock	9,000,000	Same except no conversion right	9,000,000
Coast Line, no-par common stock (stated at $100 per share)	6,000,000	Same	6,000,000
Total securities	37,500,000		36,375,000
Cash	4,842,186		4,125,000
Total cash and new securities	42,342,186		40,500,000

Under the modified Coast Line plan, the computation of adjusted net assets, which produces the amount of cash payable to the debtor's first and refunding bonds out of the "debtor's treasury" (as distinguished from the cash furnished by the Coast Line) would be computed as of January 1, 1950, and as of that date, according to the calculation made in the plan there would be a deficit of $4,603,186 in the cash so payable, after providing for the cash reserves for improvements and betterments and reorganization expenses totaling $9,105,776 as fixed by Coast Line and after making allowances for paying the debtor's outstanding first-mortgage bonds ($12,000,000) and for working capital and material and supplies ($3,600,000). By deducting this $4,603,186 deficit from the $4,842,186 of cash to be furnished by the Coast Line, $239,000 would remain distributable to the first and refunding bondholders and unsecured creditors, plus, however, $3,811,000, being a sum equal to the face amount of the debtor's first-mortgage bonds purchased by the debtor's trustees on tender pursuant to court order No. 507 and held by the trustees, and also plus any amount recoverable by the debtor's trustees as Federal income tax refunds. Therefore, the total of cash actually distributable to the first and refunding bondholders would be $4,050,000, plus tax refunds, if any.

The foregoing treatment of the debtor's creditors under the Coast Line plan is on a basis of the debtor's properties being transferred to the Coast Line free of all liens except equipment obligations. If, however, the properties are transferred subject to the liens imposed by court orders Nos. 588, 595, 662, 703, 705, 707, 765, and 791, or subject to any other lien or liens of the debtor's first and refunding mortgage

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or of the holders of the bonds issued under that mortgage, then an amount of the cash to be turned over by the Coast Line to such bondholders not exceeding the amount of cash distributable under the plan to the holders of the bonds (exclusive of the $3,811,000 distributable to them in respect of the purchased first-mortgage bonds) would be applied towards the discharge of such liens. Such cash, according to the plan, would be $239,000, plus tax refunds, if any.

If, after application of such cash, any such liens are not fully discharged, then the remaining amount of such liens would not be disturbed, and the amount of the Coast Line first-mortgage 3¾-percent, 25-year bonds (constituting part of its purchase price of the debtor's properties) would be reduced by the remaining amount of such liens, subject to any adjustment thereof as the court may determine to be proper, the court having reserved the right later to redetermine and finally establish the amounts of the liens. These Coast Line bonds, so withheld from distribution in the reorganization, would be retained by the Coast Line and disposed of by it at such time or times and in such manner as it may see fit, provided that the proceeds of any sale or other disposition of the bonds must be applied to the discharge of such liens or to reimburse the treasury of the Coast Line for payments made by it on such liens in addition to the cash payment in discharge of the liens above referred to.

Under the Coast Line modified plan each holder of $1,000 principal amount, of the debtor's first and refunding bonds would receive as of January 1, 1950, for his principal and accrued unpaid interest, the amounts of cash and new Coast Line securities shown in the table following, subject, however, to the contingencies above set forth and also subject to diminution of cash and new fixed-interest first-mortgage bonds by the amount thereof found by us to be distributable to holders of unsecured claims in respect of "free assets" other than the amounts thereof distributable to the first and refunding bondholders themselves as unsecured creditors by reason of (1) the assignment to their mortgage trustee of a claim of $487,418.32 paid in settlement of the old equipment–D disaffirmed lease and (2) any deficiency claim the first and refunding bondholders may have after obtaining the securities they would receive as secured creditors under the plan. Subject to such diminutions and possibility of diminutions due to all such provisos, the amount of cash and the principal amount or stated value of new securities receivable by the first and refunding bond holders per $1,000 bond would be:

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Cash	$90.00
Coast Line divisional first-mortgage, fixed-interest, 3¾-percent, 25-year bonds	300.00
Coast Line divisional general-mortgage, income, 4¼-percent, 75-year bonds	200.00
Coast Line participating, cumulative, convertible, $100 par-value, 4-percent preferred stock	200.00
Coast Line no-par-value common stock (at $100 stated value)	133.33
Total	923.33

Assuming the continuance of dividends of $4 per year on the Coast Line common stock, the return would be $33.08 per year on these securities, which return would accrue from January 1, 1950, and be paid at consummation date.

All unsecured creditors would be allotted cash or part of the new securities upon the following basis:

(1) The court would determine the amounts of the unsecured claims, including the amount of the first and refunding bondholders' deficiency claim and would also determine whether any unsecured claims should be subordinated.

(2) The court would decide whether certain items of property are "free assets."

(3) Other items are determined in the plan to be "free assets" and their values stated, subject to our determination in terms of cash or new Coast Line securities.

(4) The court would determine similar values of all other items determined by it to be free assets, taking all cash items as cash.

(5) The court, after the foregoing findings by it and in the plan would determine the participation of the holders of all unsecured claims.

(6) Compromises of certain unsecured claims totalling $148,488.71, referred to in court document 805, could be made at not more than 24.64 cents on the dollar, and, if no objection is made thereto, a settlement and disposition of the unsecured claims held by the Coast Line may be made on the same basis.

The new Coast Line fixed-interest 3¾-percent divisional first-mortgage bonds would be limited to the $13,500,000 to be issued in the reorganization, would mature on January 1, 1975, and would be secured by a direct first lien on all the debtor's property (except cash, accounts receivable, et cetera, and certain liens established by the court, if not discharged at consummated date) and on replacements of such property. The bonds would be direct obligations of Coast Line unconditional as to both principal and interest, and would be redeemable at a 2-percent premium prior to January 1, 1959, decreasing one-eighth of 1 percent on that date and each succeeding January

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1. There would be a noncumulative sinking fund of one-half of 1 percent of the largest principal amount of bonds at any time previously authenticated and delivered.

The new Coast Line divisional general-mortgage 4¼-percent income bonds would be a direct obligation of Coast Line unconditional as to principal, would mature January 1, 2025, be limited to the $9,000,000 principal amount to be issued in the reorganization and the interest would be contingent upon sufficient "available net income," and would be cumulative to 12¾ percent. There would be a one-half of 1 percent per annum contingent sinking fund. The bonds would be redeemable at their principal amount and accrued interest.

The bonds would be secured by a lien on the same property as the first-mortgage bonds, subject only to the lien of the latter.

The new Coast Line preferred stock would have a par value of $100 per share, bear a dividend of $4 per share per year, and participate share for share with the Coast Line common stock in any dividends after a $4 dividend has been paid on the common stock. Dividends on the preferred stock would be cumulative to 12 percent, whether or not earned, but thereafter only to the extent earned in any year and not declared or paid. No dividends paid in any year in excess of $4 previous to the first year of accumulation, would be credited against the nonpayment of the $4 dividend in any subsequent year. While any accumulation exists, no dividends could be paid on the Coast Line common stock nor could any shares of the latter stock be purchased or redeemed by the company.

The preferred stock would be redeemable in whole or in part at $100 per share plus accumulated dividends (to 12 percent) and an amount equal to interest at 4 percent per annum from the last preceding dividend-payment date to the date of redemption.

The preferred stock would be convertible into the common stock, share for share, with suitable provisions to protect against any dilution of conversion rights. If the preferred stock should be redeemed, holders could convert at any time prior to the redemption date.

Holders of preferred stock would be entitled to one vote per share in the election of directors, except that the preferred-stock holders voting as a class could elect not less than two directors in the event of default of the equivalent of six quarterly dividends.

The Coast Line could not, without consent or vote of the holders of at least two-thirds in par value of outstanding preferred stock, create any stock ranking, either as to assets or dividends, in priority to or on a parity with the preferred stock. The affirmative vote of at least two-thirds of the preferred-stock holders would be a prerequisite to any charter or bylaw amendment altering materially any existing provisions of the preferred stock.

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In case of dissolution, winding up, liquidation, or reorganization of the Coast Line, preferred-stock holders would be entitled to receive par and accumulated dividends (within the maximum accumulation) before any distribution to the common-stock holders.

The Coast Line common stock to be issued in the reorganization would be the present common stock of the Coast Line, or the equivalent thereof in the event of any stock dividends, split-ups, or the issuance of any rights subsequent to January 1, 1950.

"Available net income" would be determined for each year beginning with the year 1950 after payment of fixed charges, et cetera, and would be applied:

1. To payment of divisional general-mortgage bond interest.
2. To payment of accumulated interest on divisional general-mortgage bonds.
3. To the current sinking-fund payment on divisional general-mortgage bonds.
4. To payments into the general-mortgage sinking fund to the extent of the difference, if any, between the amounts paid in prior years and the amounts which would have been payable if available net income in prior years had sufficed for payments of $45,000 per year.
5. Any balance of available net income remaining could be applied to any proper corporate purpose.

Provisions are made for equitable determination of divisions of income in case of consolidation, merger, et cetera of Coast Line with any other company.

The plan provides for the setting up at the time of its consummation of two cash reserve funds out of the cash in the estate of the debtor in the amounts and to be expended as follows:

(1) For improvements and betterments, $8,305,776, less the aggregate net amount of extraordinary expenditures, including expenditures charged to operating expenses to the extent provided in the reserve, made by the debtor's trustees from January 1, 1950, to consummation date, in respect of (*a*) the rail program, (*b*) bridges and (*c*) stations and terminal facilities, said net amounts to be the gross amounts less any cash realizations in respect of salvage and the cash value of salvage not disposed of. Equipment maturities, cash payments on purchase of equipment and depreciation accruals, as well as "normal" improvements and betterments are not taken into account in fixing the amount of the cash reserve, since it is assumed that the debtor's current earnings (before any interest charges) plus its depreciation accruals would be adequate to provide therefor. This reserve fund would be taken over by the Coast Line upon consummation of the plan, segregated from its other funds and expended, upon order of

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the Coast Line board of directors, exclusively for improvements and betterments upon property now owned by the debtor.

(2) For reorganization expenses, $800,000, less expenditures therefor from January 1, 1950, to consummation date. The cash reserve fund for this purpose would as the court may direct either be taken over by the Coast Line upon consummation of the plan, to be segregated from its other funds and to be expended, to the extent of the amount thereof, for reorganization expenses allowed by orders of the court or retained in the debtor's estate and disposed of by orders of the court. If the reorganization expenses allowed by the court should exceed $800,000, the excess would be paid by the Coast Line, but if they be less, and the court should find that, in view of the amount of the difference and all relevant circumstances, the difference should be distributed to the creditors of the debtor, such difference would be distributed as the court should direct, otherwise the difference would be retained by the Coast Line.

The plan provides that the reorganization managers would be not more than three in number, all to be appointed by the court.

Provision is made in the plan for protection of the interests of employees by a provision to be contained in our order of approval of the acquisition of the debtor's properties by the Coast Line as follows:

> That during the period of 4 years from the date of this order, such transaction will not result in employees of the carrier or carriers by railroad affected by such order being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to this section of the order shall not be required to continue for a longer period, following the date of the order, than the period during which such employee was in the employ of such carrier or carriers prior to the date of this order, provided, however, that nothing in this provision shall bar the Coast Line and authorized representatives of employees of the carriers from entering into agreements for the protection of the interests of the employees.

On brief, the quoted provision was modified so as to provide that the 4-year period would start from time of transfer of the properties to the Coast Line.

The plan would also provide that all existing through routes via Jacksonville, Fla., to and from points now served by the debtor in connection with Seaboard Air Line Railroad Company and Southern Railway System shall be kept open.

(*c*) *Plan submitted by F. K. Conn.*—The plan submitted by F. K. Conn, holder of the debtor's first and refunding bonds would provide for an internal reorganization of the debtor. The effective date would be fixed by the reorganization managers as of approximately the date of consummation of the plan, and in no event earlier than 3 months prior thereto insofar as the reorganization managers at the time of fixing the date, with the approval of the court, may be able to deter-

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mine. The new securities, which would be wholly common stock, would be dated as of the effective date. Equipment obligations would be assumed by the reorganized company.

The holders of the outstanding first-mortgage bonds of the debtor would be paid their principal amount and accrued interest in cash.

The holders of the first and refunding bonds would receive for each $1,000 bond and all accrued unpaid interest, 9 shares of new common stock, which would be all of the same class and without par or nominal value. This would result in an issue of 405,000 shares.

Unsecured creditors and stockholders would receive nothing.

A new corporation would be formed to which would be transferred all the debtor's assets, except those which the reorganization managers would set aside out of the debtor's estate sufficient to provide payment of obligations of the debtor such as may be considered to be payable as a result of a final determination of rights to participate in assets determined to be "free assets."

All expenses of the reorganization would be paid in cash.

There would be two reorganization managers, one to be selected and appointed by the court and the other by the first and refunding bondholders.

(*d*) *Plan submitted by W. G. Welbon, John W. Snyder, E. N. Claughton, and A. W. Corbett.*—These parties, holders of first and refunding bonds of the debtor, have submitted a plan providing for a capitalization of $56,250,000, exclusive of equipment obligations which would be assumed by the reorganized company. The plan provides for an internal reorganization. The capitalization would be represented by $45,000,000, principal amount, of new general-mortgage 75-year, 5-percent income bonds and 450,000 shares of new common stock of no-par value, but of a stated value of $25 per share.

The reorganized company, when authorized by a resolution of two-thirds of the board of directors and subject to our authorization or approval or that of such other governmental body as at the time would have jurisdiction in the premises, could issue and sell or pledge for any proper corporate purpose other than payment of interest on the general-mortgage income bonds or payment of dividends on common stock, subject to limitations and restrictions to be specified in the mortgage, not exceeding $5,000,000, principal amount, of new fixed-interest bonds or notes, bearing interest at a rate not exceeding 4-percent per annum. The new first-mortgage bonds would be secured by a direct first lien on all the property covered by the general mortgage, such lien being superior to that of the general mortgage (which would contain a provision permitting the issue of the $5,000,000 of first-mortgage bonds or notes on the above terms). This mortgage would authorize the reorganized company to issue additional first-

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mortgage bonds or notes from time to time, to provide for, or to reimburse the reorganized company for not exceeding 75 percent of net expenditures for additions to, or extensions or improvements of, the property of the reorganized debtor. If any such additional first-mortgage bonds should be issued with respect to the acquisition of equipment, a sinking fund would be required to be established in addition to any other sinking fund for such bonds or notes, payable in equal annual installments in an amount sufficient to retire the bonds, or notes, within the expected efficient service life of the equipment, in no case to exceed 15 years. No first-mortgage bonds or notes could be issued with respect to additions or improvements for which payment is provided for in a cash reserve of not less than $10,725,551 which would be set aside out of the debtor's cash. Emergency first-mortgage bonds or notes could be issued on certain specified conditions.

The general-mortgage under which the income bonds would be issued in the reorganization would provide (1) for annual payments, after payment of any fixed charges and before contingent interest, into a capital expenditures fund, such payments to be equal to 2 percent of total railway operating revenues and to be cumulative, (2) for one-half of 1 percent annual sinking-fund payments, if earned after fixed charges, capital fund payments, and payment of contingent interest on the income bonds but before accumulations thereof, (3) for redemption of the income bonds in whole or in part at any time on 30 days' notice at their principal amount and accrued interest, (4) for interest on the income bonds, which would be cumulative up to a maximum of 15 percent, and (5) for the entire voting power of the holders of the common stock to vest in the holders of the income bonds if unpaid interest thereon should at any time accumulate up to the maximum 15 percent, the voting right to so remain until all accumulations are paid.

Other provisions of the plan would be as follows: (1) The cash reserve of $10,725,551 would be set aside, used and credited for and against the improvement and betterment program, working capital and reorganization expense purposes as provided in our disapproved plan, (2) any excess cash in the debtor's treasury would be distributed pro rata to the holders of the debtor's outstanding first and refunding bonds in payment of past due installments of interest in the sequence in which they became due, (3) the $3,811,000, principal amount of the debtor's outstanding first-mortgage bonds purchased by the debtor's trustees would be canceled and the remaining $8,189,000 paid in cash plus accrued interest to date of payment, and (4) holders of the outstanding first and refunding bonds would receive for each $1,000 bond and all accrued and unpaid interest to the effective date of the plan, $1,000, principal amount, of new general-mortgage income bonds and

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10 shares of new no-par common stock at the stated value of $25 per share.

As to unsecured creditors, the plan would provide that holders of unsecured claims (other than those held by the Coast Line) would receive from cash in the treasury of the debtor, cash equal to their pro rata shares of the total value, as determined by us, of the assets of the debtor adjudged by the court to be "free assets." In determining such pro rata shares, all unsecured claims held by or for the use, benefit, or account of the holders of the debtor's outstanding first and refunding bonds as a class, and the amount of any deficiency claim allowed by the court on those bonds, would be included in the total of unsecured claims, but no pro rata payments would be made thereon. The two unsecured claims, aggregating approximately $1,900,000 assigned to the Coast Line, would be held to be subordinate to all other unsecured claims and nothing would be distributed with respect to them.

By reason of the treatment provided for holders of the debtor's outstanding first and refunding bonds, the liens imposed in their favor by court orders Nos. 588, 595, 662, 703, 705, 707, 765, 791, and 868 would be canceled.

A voting trust would be established for the common stock issued in the reorganization and all other voting stock thereafter issued by the reorganized company during the continuance of the voting trust, such voting trust to be for 5 years from the date of consummation of the plan and under which would be deposited all the new capital stock. The voting trustees would be three in number, all to be approved by the court, two to be designated by the St. Joe Company, or any successor thereof, and one by the court to represent the minority interest, the latter to have the power of election of one-third of the total number of directors of the reorganized company, or if the total is not evenly divisible by three, then the number of directors nearest to one-third of the total number. The directors elected by the voting trustee appointed by the court would have the right of appointment of one member of any finance or executive committee of the board of directors which might be created by the board. All or any part of the trusteed stock could be sold by the trustees upon affirmative vote of a majority in number of shares of owners of the stock. At the termination of the voting trust, each stockholder would have the right of cumulative voting under the provisions for the issue of the common stock.

There would be three reorganization managers, one designated by the St. Joe Company, one by the court, and the third also by the court (or in such manner as the court might determine) to represent the present minority holders of the debtor's outstanding first and refunding bonds.

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The effective date of the plan would be fixed by the reorganization managers with the approval of the court, provided that it be approximately the date of consummation of the plan and, in no event, earlier than 6 months prior thereto, insofar as the reorganization managers may be able to determine at the time of fixing the date with the approval of the court. All the new securities would be dated as of the effective date.

(*e*) *Plans proposed by Herman Hamel, holder of the debtor's first and refunding bonds and by W. R. Huggins, and others employees of the debtor.*—Identical plans providing for employee control of the reorganized company, were filed on behalf of each of the above-named parties, the one submitted on behalf of the debtor's employees being later supplemented or superseded by an "alternate plan," which will be subsequently described. The original plan (as amended during the hearing) filed on behalf of both parties was not supported at the hearing by evidence or on brief or oral argument, and the identical counsel for the two parties, who filed the plan, appear to rely principally, if not exclusively, on the "alternate plan" later filed on behalf of the employees.

The original plan, which will be briefly described, provides for the incorporation of a new company the capitalization of which would consist of $28,750,000 of 4½-percent, 30-year, fixed-interest first-mortgage bonds, not exceeding $9,000,000 of 2½-percent contingent interest (cumulative to 15 percent) 50-year certificates of indebtedness, $6,750,000 of $50 par value 5-percent dividend preferred stock and $9,500,000 of $25 par value common stock to be of two classes, class A of an amount of $5,000,000 and class B of an amount of $4,500,000. Capitalization thus would amount to not exceeding $54,000,000, exclusive of equipment obligations of the debtor, which would be assumed by the new company.

The certificates of indebtedness would be issued to the holders of the debtor's first and refunding bonds in a total amount not exceeding $200 principal amount per $1,000 first and refunding bond, sufficient to fully satisfy the court-imposed liens hereinbefore described.

Additional to such allocation, holders of these bonds would receive for each $1,000 bond and all accrued unpaid interest, $750 in cash from the proceeds from the sale of the new first-mortgage bonds by the new company and from cash and its equivalent in the debtor's treasury to the extent that cash shall be required in excess of the proceeds from the sale of the new first-mortgage bonds; three shares ($50 par value) of new preferred stock; and four shares ($25 par value) of new class B common stock.

The class B common stock would be the same as class A except that

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it would have no voting privileges nor would the preferred stock to be allocated to the first and refunding bond holders.

All the voting stock of the new company, viz, the 200,000 shares of class A common stock (par value, $5,000,000) would be offered for sale to the present employees of the debtor.

Unsecured creditors would receive nothing.

Reorganization managers would be not more than three in number, one of whom would be nominated by the debtor's employees, one by the first and refunding bond holders, both subject to the approval of the court, and one by the court.

A cash reserve of $10,000,000 would be established to pay the debtor's remaining outstanding first-mortgage bonds, costs of reorganization, and any unpaid compensation allowed the debtor's trustees, their attorneys, counsel, and agents. Any cash remaining in the fund would become part of the working capital of the new company.

The effective date would be approximately the consummation date.

(*f*) *Alternate plan proposed by W. R. Huggins, and others, employees of the debtor.*—The alternate plan submitted by these parties would also result in employee control of the new company, and its provisions would be substantially the same as the first proposal except for a difference in the amounts and certain of the terms of the new securities comprising the capitalization, and in the amounts of new securities allocated to the debtor's outstanding first and refunding bond holders.

Capitalization, exclusive of equipment obligations, which would be assumed, would be as follows:

First-mortgage, fixed-interest 4-percent 30-year bonds	$15,000,000
Certificates of indebtedness, contingent interest 2½-percent, 50-year (not exceeding)	9,000,000
Preferred stock, non-voting, $50 par value, 5-percent dividend	15,000,000
Common stock:	
Class-A, $25 par value, voting	7,500,000
Class-B, $25 par value, nonvoting	7,500,000
Total	54,000,000

On brief, the interveners assert that 160,000 shares or 53.33 percent of the voting stock would be reserved exclusively for sale to employees, and would be set up as a voting trust for them.

Each holder of $1,000, principal amount, of the debtor's outstanding first and refunding bonds would receive for his principal and all unpaid accrued interest to the effective date of the plan (consummation date or approximately that date) the following cash and new securities:

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Cash	$500.00
Certificates of indebtedness (not exceeding)	200.00
Preferred stock (6.666 shares)	333.33
Common stock, nonvoting, class B (6.666 shares)	166.67
Total	1,200.00

Other provisions of the alternate plan are substantially the same as in the original amended plan already described.

On brief, these interveners assume that $6,000,000 of the certificates of indebtedness would be sufficient to satisfy the liens of the bondholders established by the court upon cash used for improvements. On this basis the total capitalization would be $51,000,000 exclusive of equipment obligations, and the total of cash and new securities to be received by each holder of a $1,000 bond would be $1,133.33.

We hereinafter will discuss the merits of all of these plans.

DEBTOR'S EARNINGS AND ASSETS

Revenues, expenses, normal year and other forecasts.—The debtor's revenues and income available for fixed charges for the years 1916 to 1935, inclusive, with certain adjustments and period averages, were stated in our previous reports herein. For convenience, the income available for fixed charges, as reported to us and the operating ratios for the years 1936 [1] to 1950, inclusive, are set forth below:

Period	Total railway operating revenues	Operating ratio	Income available for fixed charges
Year 1936	$8,614,508	75.64	$958,903
Year 1937	9,303,206	76.57	793,768
Year 1938	9,594,391	72.99	980,061
Year 1939	9,261,367	77.02	810,899
Year 1940	10,748,838	77.60	994,130
Year 1941	11,499,121	75.25	1,691,964
Year 1942	20,838,086	55.10	7,985,400
Year 1943	32,559,085	51.00	9,074,252
Year 1944	31,730,202	60.06	5,835,252
Year 1945	29,571,007	66.58	4,337,148
Year 1946	26,543,488	78.07	4,533,531
Year 1947	27,054,334	87.54	1,686,540
Year 1948	28,653,199	83.40	2,036,174
Year 1949	25,902,147	84.18	31,440
Year 1950	26,890,358	83.17	1,566,103

NOTE.—Income available for fixed charges is unadjusted for extraordinary or nonrecurring items.

In our report of April 6, 1942, we discussed the effect of the abandonment by the debtor in 1935 of its Key West extension and stated "It is therefore apparent that the earnings record for the years immediately prior to 1936 affords little, if any, basis for a determination

[1] For the 5-year period 1936–40, following the abandonment of the Key West extension, the reported earnings available for interest were adjusted and described in our report of April 6, 1942, and as adjusted averaged $1,035,311 per year.

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of probable earnings in the future." By stipulation of the parties, revenues and expenses as reported by the debtor's trustees subsequent to the hearings in 1950 are made part of the record.

We also considered in our former reports the forecasts of earnings and the bases therefor testified to by the debtor's trustees and others. Thus, at the hearing in 1941, the debtor's trustees submitted a statement of estimated average annual income for the 5-year period 1941–45. It was based upon annual railway operating revenues of $12,300,000 and railway operating expenses of $9,425,000, and indicated an amount of $1,268,000 available for interest. At the same hearing the St. Joe Company filed an estimate of "income available for fixed charges" of $1,380,000 in a normal year, with higher and lower estimates for a "minimum income year" and a "maximum income year." The estimate for a normal year assumed operating revenues of $10,300,000 and operating expenses of $7,480,000. We approved the debtor's trustees' estimate in our report of April 6, 1942, *supra*.

Again at the further hearings in May 1944, Miles Kennedy, an expert for the Lynch interests, submitted an estimate of $2,363,000 as income available for fixed charges before Federal income and excess-profits taxes for a normal year. This estimate assumed operating revenues of $12,550,000, as previously estimated by the debtor's trustee except for an increase of $250,000 in passenger revenues. His increased forecast of income available for fixed charges over that estimated by the debtor's trustee resulted mainly from his estimate of savings which he believed would be realized from the rehabilitation and betterment program instituted by the debtor's trustees. In our report of January 8, 1945, *supra*, we found that $1,500,000 could be reasonably expected to be available for payment of interest in a future normal year.[5]

At the further hearing in November 1945, the Kennedy estimate was revised by one of his partners, W. A. Gordon, also testifying on behalf of the Lynch interests. Gordon estimated income of $1,947,000, available for fixed charges before Federal income and excess-profits taxes for a future normal year. His estimate was based on $12,550,000 of operating revenues used by Kennedy. In our report of April 8, 1947, *supra*, we reviewed the new evidence and adhered to our previous estimate of $1,500,000 as the income that would be available for payment of interest in a future normal year.

No further hearings were held before us until those concluded in July and August 1950. However, we did review the debtor's earn-

[5] Previous estimates made no reference as to how Federal income taxes were treated. Our finding of an amount of $1,500,000 is correctly treated by the parties as income available for interest after Federal income taxes.

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ings record for the years 1946 and 1947 in our report of March 25, 1948, *supra*, in which we again declined to increase our previous estimate of $1,500,000 of income available for payment of interest in a future normal year.

At the hearings in 1950, the record with respect to the debtor's earnings was further supplemented. At the request of the St. Joe Company, statements containing comparative income accounts for the debtor for the years 1946 to 1949, inclusive, were filed by one of the debtor's trustees. The statements also show the extraordinary or nonrecurring items reflected in the reported income available for fixed charges. Railway operating revenues for that period have been set out above. The extraordinary or nonrecurring items included in income accounts and affecting the amounts available for fixed charges are as follows: In 1946 there is a credit of $1,450,000 for Federal income taxes, and charges of $231,666 and $459,537 for deferred maintenance and the new rail program, respectively; in 1947 there is a credit of $1,400,000 for Federal income taxes, charges of $217,287 and $894,453, for deferred maintenance and the rail program, respectively, and a charge of $1,070,338 for retirement of a portion of the debtor's Okeechobee branch; in 1948 there are charges of $281,238 and $564,363, for referred maintenance and the rail program respectively, and a credit of $6,955 on account of the Okeechobee branch; in 1949 there is a charge of $1,379,889 for Federal income taxes, a charge of $1,018,615 for the rail program, and a credit of $38,203 on account of the Okeechobee branch. If all such extraordinary or nonrecurring items are excluded, income available for fixed charges and Federal income taxes for the years 1946 to 1949, inclusive, would be, in order, $3,774,734, $2,478,618, $2,874,820, $2,391,741.

The debtor's trustee further submitted and testified in support of an estimate of the trustees of annual average income available for fixed charges and Federal income taxes for 6 years commencing in 1950.

In this forecast, annual average railway operating revenues are estimated at $23,810,000, annual average railway operating expenses at $19,048,000, and annual average income available for fixed charges and Federal income taxes is estimated at $1,879,000. Railway operating revenues are based on estimates of freight revenues prepared by the trustees' chief freight traffic officer and an estimate of passenger revenues prepared by their chief passenger traffic officer. Other revenue items were calculated in the trustees' office. Annual average railway operating expenses were determined by applying an operating ratio of 80 percent to average operating revenues. According to the debtor's trustee, the substantial decrease in operating revenues is based on the belief of the trustees and their staff that the extraordinary demand for goods and material which could not be obtained during the war years

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would soon be satisfied with a resultant leveling off of traffic. In the opinion of the debtor's trustee there would be a decided decrease in traffic in automobiles, electric appliances, refrigerators, and highway and construction materials. He was of the further opinion that increased rates would further divert vegetable traffic to trucks and citrus fruit to refrigerator ships. A further and substantial decline in passenger traffic was also expected by the debtor's trustee.

While conceding that the volume of the future traffic of the debtor would undoubtedly be on a much higher level than prevailed before the war, it was his opinion that increased costs of operation and materials would more than offset the increased revenues. This forecast is criticized, particularly by the Lynch interests, as being unduly conservative, and these interests point to past estimates of the trustees to support their allegations.

An additional forecast of the debtor's income available for fixed charges and Federal income taxes of $2,150,000 in a future normal year was made on behalf of the Coast Line by its counsel who testified as a witness at the last hearings. The Coast Line also presented other witnesses who testified and submitted exhibits with respect to the debtor's postwar earnings and prospective revenues in the years 1950, 1951, and 1952.

An estimate of prospective revenues was made by the vice president in charge of traffic of the Coast Line. For the years 1950 to 1952, inclusive, he estimated total operating revenues of $25,524,741, $25,594,977, and $25,617,008, respectively, or an annual average of $25,578,908 for the period. These estimates are based on underlying estimates of freight, passenger, mail, and express revenues, and "all other operating revenues." The underlying estimates of freight revenues are based on detailed studies of the principal revenue commodities in 1949, including forwarder traffic and less-than-carload freight. Trends of the tonnage and revenues throughout past years were also ascertained. Estimated gross freight revenues from each commodity for each of the years 1950 to 1952, inclusive, were then arrived at by taking into consideration the tonnage and revenue trends in light of the witnesses' knowledge of particular factors likely to affect the revenues from particular commodities, upon the assumption that industrial production, housing, and highway construction would continue at approximately the then prevailing levels. Estimated gross freight revenues would decline 3.9 percent in 1950 from those received in 1949, 1.7 percent in 1951 and 0.2 percent in 1952.

The underlying forecast of passenger revenue is based on an estimate that there will be a decrease of 5 percent in each of the years 1950, 1951, and 1952 under each previous year, which, in comparison with 1949, produces a decrease of 5 percent in 1950, 9.8 percent in

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1951, and 14.3 percent in 1952. The predicted decreases are based on the declining trend in passenger revenues which has existed for some time and which, in the witness' opinion, will continue for the next several years as a result of highway and airplane competition. In the underlying estimates of Coast Line's vice president in charge of traffic, revenues from mail transportation are expected to increase over those received in 1949 by 2.8 percent in 1950, 4.9 percent in 1951, and 6.9 percent in 1952. These estimates are based on prevailing trends, due in part to diversion of traffic from express to parcel post, and reflect consideration of the growth in population. His estimates of express revenues show a decrease from 1949 of 4.8 percent in 1950 and 1.0 percent in each of the years 1951 and 1952. The decrease in 1950 is based on the trend prevailing since 1946, largely due to diversion of traffic from express to parcel post. This diversion, in the opinion of the witness, has about reached its limit. His estimates of the total of "all other operating revenues" show decreases from 1949 of 4.8 percent in 1950, 8.4 percent in 1951, and 11.8 percent in 1952. The items included in such revenue are related to freight and passenger traffic, and his estimates of such revenues follow his estimates of revenues from such traffic.

In exhibits presented by the vice president in charge of accounts of the Coast Line, certain adjustments are made in the debtor's reported income available for fixed charges for the years 1947, 1948, and 1949. These estimates are intended to show the debtor's actual income uninfluenced by extraordinary or nonrecurrent items. The postwar year 1946 is excluded on the ground that operations were so influenced by the war that results in that year should not be accepted as indicative of future normal results. Adjustments were made to exclude Federal income taxes. The amounts as so adjusted were further adjusted for all expenditures incurred on account of the retirement of the debtor's Okeechobee branch. Further adjustments reflecting all expenditures reported on account of deferred maintenance were made.

In addition, adjustments were made on account of the expenditures incurred in the debtor's rail-relaying program. However, only a part of the cost in each year of the rail-relaying program was added to the reported income since the witness believed it would be erroneous to assume that the debtor would never incur any further extraordinary charges in respect of a rail program. The witness developed a constructive normal annual charge of $518,856 which should represent expenditures each year with respect to relaying rail in its line. The difference between that amount and the total of expenditures chargeable to operating expenses reported by the trustees in each year on account of the rail program was then added to reported income available for interest instead of the entire amounts expended on the rail

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program. In arriving at the above charge of $518,856, the witness spread the total expenditure for the complete rail-relaying program ($9,470,156) over the number of years (30) the rail would be expected to last, thereby obtaining an amount of $315,672 per year for amortization of the rail laid under the program; he then obtained the ratio of the number of equated track-miles covered by the rail-relaying program for 1946–50 to the number of all the debtor's equated track-miles, such ratio being 60.84 percent; he then divided the above amount of $315,672 of annual amortization of the cost of the present rail program by 60.84 and multiplied the quotient by 100, thus obtaining the sum of $518,856 as the proper regular annual amortization of the cost of all the rail in the debtor's entire line.

The amounts, on account of the rail program, which properly should be added to reported income available for fixed charges in each year 1947–49, according to the witness, would be $375,597 for 1947 instead of the $894,453 actually expended in that year; $45,507 in 1948 instead of $564,363; and $499,759 for 1949 instead of $1,018,615.

These further adjustments for the years stated with respect to the rail-relaying program are criticized on brief by the Lynch interests on the ground that such adjustments (1) erroneously failed to include in the mileage of the debtor, as that to which the rail-relaying program applied, the 30 miles of main-line track of the Fort Pierce cut-off, which, though technically not a part of the program, was laid with new rail during the period, thereby eliminating unproductive mileage, and should be classed as a programmed item; and (2) erroneously included 120.14 miles of passing track, cross-overs, and turn-outs which, the Lynch interests claim, would be relaid from time to time, when necessary, with second-hand rail and not as a part of a rail-laying program. The Lynch interests contend that these alleged errors have the effect of improperly reducing the adjustment in income available for fixed charges as shown on the statement of the debtor's trustee to the extent of $122,034 per year. The Coast Line on brief minimizes the effect of any such readjustments of its adjustments, but states that it does not contend that the "suggested" adjustments are exact.

While not reflected in the exhibit containing adjustments, the Coast Line concedes that reported income available for fixed charges and Federal income taxes in those years should be further adjusted to reflect expected losses in income on the bonds and notes of the Peninsula & Occidental Steamship Company, and interest on time deposits received in those years. The adjustments so proposed would reduce the reported income by $26,513 in 1947, $20,018 in 1948, and $72,240 in 1949. The effect of all adjustments proposed by the Coast Line would

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increase reported income available for fixed charges and Federal taxes to $1,953,732 in 1947, to $2,315,054 in 1948, and to $1,800,449 in 1949, or an average of $2,023,078 for the period.

As indicated previously, the estimate of Coast Line's counsel, testifying as a witness, of income available for fixed charges and Federal income taxes in the future normal year is $2,150,000,[9] and represents his judgment based on the earnings of the debtor as adjusted in the years 1947 to 1949, inclusive, the forecast of railway operating revenue and the reported income of the debtor for 1950 insofar as it was available. He also testified that while he did not believe that any precise amounts should be used to adjust the debtor's reported income available for fixed charges for 1947, the effect thereon of the hurricanes, floods, and freezes occurring in that year should be taken in consideration.

There was also incorporated in the record at the recent hearing the further oral testimony and exhibits of the witness Gordon for the Lynch interests, presented at the hearing on the plan last approved by the Commission before the district court in January 1949. At that hearing Gordon estimated that during the "next four or five years" the revenues of the debtor would approximate $29,000,000 a year and that income available for fixed charges and Federal income taxes would approximate $2,850,000 per annum. This estimate is predicated on a study of the growth of the territory served by the debtor, including traffic potentialities, a study of comparative and competitive traffic developments, and a study of the earnings for the postwar years 1946–48, inclusive, with adjustments. For data for his comparative studies of traffic growth and development of the territory, he used 1947 as the latest complete year available. As a base period, he used in general 1940 on the assumption that our previous findings of income available for fixed charges were substantially based upon the original 1941 estimate of the receiver.

Factors considered by Gordon in his study of the growth of the territory served by the debtor and its traffic potentialities, comprised trends in population, farm acreages, orange and grapefruit production, value of vegetable crops, farm construction, number of head of cattle, value of livestock, effective buying income, retail sales, value of manufactured products, number of domestic electric customers, manufacturing wages and salaries, bank deposits, electric power outfit, value of manufactured products, and bank debits. The study showed,

[9] This estimate was arrived at in light of the provisions of subsection (e) of section 77 relating to valuation, and is not intended as an estimate to be used in determining fixed charges on the basis prescribed by the provisions of clause (4) of subsection (b) of section 77.

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insofar as these factors control, a tremendous growth in the territory served by the debtor, and an impressive increase percentagewise over the United States as a whole.

Gordon's traffic study disclosed an increase of 220 percent in tons of freight originated and an increase of 122 percent in tons of freight terminated on the debtor's line from 1940 to 1947. In the same period, tons of freight originated on all railroads in the southern region, excluding the debtor, increased only 67 percent, and tons of freight terminated on all railroads in that region, excluding the debtor, increased only 73 percent. The study further showed that the debtor's freight revenues increased 162.3 percent, compared to 158.7 percent for the entire southern region and 99.1 percent for all class I roads in the country.

Gordon's study of postwar earnings was limited to reported income for the years 1946, 1947, and 1948 (with income for the last 2 months of 1948 estimated). Gordon also made numerous adjustments of the reported amounts in order to eliminate the influence of what he considered to have been abnormal factors prevailing in those years. He first made adjustments for nonrecurring expense items, such as expenditures for the debtor's rail-relaying program, deferred maintenance, maintenance incurred by reason of hurricanes and floods, and the retirement of the Okeechobee branch. He next made adjustments for nonrecurring revenue items, such as losses incurred on account of hurricanes, freezes, and floods. Adjustments were then made to reflect savings realized from the operation of the Fort Pierce cut-off and new Diesel locomotives. Further adjustments were made to reflect increases in rates and fares and increases of wages, material, prices, and taxes. As adjusted by him, the approximate reported balances for fixed charges and Federal income taxes of $3,282,000 and $297,000, for years 1946 and 1947, respectively, and $1,700,000 as estimated by Gordon for the year 1948, were increased to $3,458,000, $2,522,000, and $2,855,000, for those years, respectively, or an annual average of $2,945,000 for the period. If the actual reported earnings for fixed charges and Federal income taxes of $2,036,174 were substituted for Gordon's estimated $1,700,000 for 1948, the result, after applying his adjustments, would be $3,191,174, and the annual average for the 3 years would be $3,057,058.

Gordon's forecast is criticized by the Coast Line as overoptimistic. It contends that the forecast was based directly upon Gordon's own calculation of $2,855,000 as the adjusted 1948 balance available for fixed charges and Federal income taxes, since both that amount and the amount he used for revenues ($29,000,000) closely relate to those for the year 1948 and are not very close to his adjusted figures for 1946 and 1947. Coast Line further contends that the fallaciousness

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of Gordon's forecast is shown by testing it with respect to the year 1949, results of which were not available at the time Gordon made his forecast. Reported income available for fixed charges and Federal income taxes for 1949 after adjustments for all nonrecurring items including all charges to operating expenses for the rail program, as calculated by the debtor's trustees, is $2,391,741 or $458,259 less than Gordon's forecast. Coast Line also maintains that certain of Gordon's adjustments of incomes available for fixed charges and Federal income taxes were improperly made. It insists that there is no justification for adjusting the reported figures by the entire cost of the debtor's rail program, and that if adjusted to reflect only a constructive normal charge to operating expenses in respect to the relaying of rail, Gordon's adjusted balance for 1948 would be decreased by about $125,000, representing approximately the difference between the amount of $518,856 estimated by the Coast Line as such a normal charge and the amount of $644,000 reflected in Gordon adjustments. Coast Line further maintains that Gordon's total adjustments of $830,000 and $284,000 for the years of 1947 and 1948, respectively, on account of hurricanes, floods, and freezes cannot be accepted as accurate. It does agree, however, that the debtor's earnings in 1947 were reduced by a hurricane of unusual severity and that this factor should be taken into consideration.

An officer of the St. Joe Company, while testifying at the recent hearings in support of the St. Joe Company plan, stated that the debtor's "earnings according to the general information had shown substantial and rather stable situations which indicated it would be safe to consider approximately two and one-quarter million or two and one-half million income." He later testified that those amounts should be considered normal income available for interest before Federal income taxes. From the record it would appear, however, that these amounts are not to be considered as the witnesses individual estimates. Again, while the vice president in charge of traffic of the Southern Railway did not purport to make a detailed forecast of the debtor's earnings, he testified that, based on his experience and knowledge of the debtor's traffic, he was of the opinion that the debtor's passenger traffic would increase in the next 5 years over that of 1949, and that there might be some decrease in freight traffic unless the competition from trucks and other sources is met.

From the foregoing it is seen that the latest estimates of future annual normal railway operating revenues are those of the debtor's trustees of $23,810,000, of Coast Line's vice president in charge of traffic of $25,578,909, and of Gordon of $29,000,000 as compared with that of $12,300,000, estimated earlier by the debtor's trustees and based upon prewar revenues. For the 3-year period 1946 to 1948, inclusive,

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the debtor's railway operating revenues averaged $27,417,007, for the 3-year period 1947 to 1949, inclusive, they averaged $27,203,227, for the 4-year period 1947 to 1950, inclusive, they averaged $27,125,009, and for the 5-year period 1946 to 1950, inclusive, they averaged $27,008,705.[10] It thus appears that the growth of the territory served by the debtor resulting from the increase in its population, agricultural, and to some extent industrial production, as well as other factors, has produced a substantial increase in traffic volume over the prewar period, and this increase should be considered relatively permanent. This is indicated not only by the increased revenues enjoyed in the postwar years but also by the total freight tonnage carried by the debtor and, especially by the increase in freight tonnage originated on its lines. It should be noted, however, that the debtor's traffic in products of agriculture, its second most important commodity group, especially fresh vegetables and citrus fruits, are quite vulnerable to highway and waterway competition.

Another highly important factor to be considered is passenger revenues. Revenues from this source constituted approximately 26 percent of the debtor's total railway operating revenues in the years 1947 to 1949, inclusive. Both the debtor's trustee and Coast Line's vice president in charge of traffic forecast a decrease in passenger revenues. Coast Line's vice president estimated a total decrease of 14.3 percent by the end of 1952 from 1949 passenger revenues, after which time he believed such revenues would become stabilized. Passenger revenues and certain of the revenues allied to it, are especially vulnerable to competition from airlines, motor carriers, and private automobiles, and the declining trend in revenues from these sources is evidenced by the debtor's experience in the postwar years. It appears, however, from the debtor's operating revenues for 1950, filed with us subsequent to the hearings, that the decline in passenger revenues may now have been halted to a considerable extent. Passenger revenue in 1950 declined only 5.4 percent from 1949 as compared with a decline of 10.35 percent in 1949 from 1948. As indicated, we are satisfied that the debtor's traffic volume will continue on a substantially higher level than that existing in prewar years, and we believe that the record justifies the conclusion that total railway operating revenues of $26,000,000 may be expected in the future normal year. The important question is to what extent and in what amount the increased operating revenues will be reflected in income available for fixed charges and other corporate purposes.

[10] The 1950 income statement of the debtor, filed after the close of the hearings, shows that $1,391,210 of railway mail pay was received in 1950 and is included in operating revenues for that year. The income account states that this amount should be allocated $104,135 to 1947, $136,227 to 1948, $148,085 to 1949, and the remaining $1,002,763 to 1950. These adjustments are reflected in the above averages.

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The debtor's trustee forecasts a balance of $1,879,000 available for fixed charges and Federal income taxes in the future normal year. Coast Line's witness, $2,150,000, and Gordon $2,855,000. Before testing these estimates with the actual reported results realized in the postwar years, it is necessary to adjust the latter for the extraordinary or nonrecurrent items reflected therein. If adjusted for all such items as shown in the exhibits presented by the debtor's trustees and if railway operating revenues are adjusted to reflect proper accruals of railway mail pay received in 1950 but partly allocable to prior years as hereinbefore stated, the resultant incomes available for fixed charges and Federal income taxes are $3,774,734 is 1946, $2,582,753 in 1947, $3,011,047 in 1948, and $2,539,826 in 1949. If the 1950 income of $1,566,103, as reported to us after the close of the hearings, is similarly adjusted to reflect the addition thereto of the net charge to operating expense for that year of $2,052,385 on account of the rail program as estimated by the debtor's trustees, the result is $3,230,041.

The average amounts are $3,122,844 for the period 1946–48, inclusive; $2,711,209 for 1947–49, inclusive; $2,840,917 for the period 1947–50, inclusive; and $3,027,680 for the entire 5-year postwar period 1946–50, inclusive.

However, we do not consider it proper to adjust income available for fixed charges and income tax by adding the entire cost of the rail program incurred in those years, since we would thereby assume that the debtor would never have any extraordinary charges in respect of a rail program. This assumption, in our opinion, is erroneous, particularly in considering such past earnings in estimating earnings for the indefinite future. While we do not accept Coast Line's vice president in charge of accounts "constructive normal charge to operating expenses in respect of relaying of rail" of $518,856 a year as exact in light of the Lynch interests' criticism and their contention that such amount is excessive by $122,034, as well as in view of the admission of the Coast Line that its proposed adjustments cannot be accepted as technically accurate, nevertheless, it is the only estimate supported on the record. We believe that it constitutes a reasonable estimate for the purposes of this proceeding. Our statement of income accounts for the years 1947–50, will be adjusted on that basis, but the criticism will be taken into consideration. The same principle applied to the year 1946, when the charges to operating expenses on account of the rail program amounted to $459,537, would result in no reduction being made in reported expenses, since the amount expended for rail did not exceed the "constructive normal charge" for that purpose.

Upon consideration of the income accounts of the debtor for the period 1946–50 as reported to us, the adjustments for the years 1946–49 made by the trustees and as estimated for 1950, the further ad-

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postwar revenues, we note that in his forecast he employs an operating ratio of 80 percent in determining his estimate of net revenue from rail operations and that this ratio represents his and the trustees' staff's best judgment. From our consideration of the entire record we find and conclude that the debtor's income available for fixed charges and Federal income taxes may reasonably be expected to amount to $2,300,000 in a future normal year.

Assets and liabilities; valuation data; scrap value.—The debtor's general balance sheet as of December 31, 1949, shows the following assets: Investment in transportation property, less recorded depreciation and amortization, $77,488,449 consisting of $78,528,415 for road and equipment (after deduction of $12,383,921 for accrued depreciation and $1,447,866 for accrued amortization of defense projects) and $19,678 for improvement on leased property, less a credit balance of $1,059,644 for donations and grants; capital and other reserve funds, $2,089,487, miscellaneous physical property, $280,491; investments in affiliated companies, $1,795,315; other investments, $263,791; total investments, less recorded depreciation and amortization, $81,917,533; current assets, $20,474,427, consisting of $7,001,752 cash, $8,000,000 temporary cash investments, $418,776 special deposits, $188,849 loans and bills receivable, $241,412 net balances receivable from agents and conductors, $828,858 miscellaneous accounts receivable, $3,520,005 material and supplies, $13,565 interest receivable, $245,955 accrued accounts receivable, and $15,255 other current assets; deferred assets, $233,839; unadjusted debits, $1,843,538; producing total assets of $104,469,337.

Liabilities shown on the same balance sheet are as follows: Capital stock, $37,500,000; long-term debt, $60,403,086, consisting of $53,189,000 funded debt unmatured, $5,314,086 equipment obligations, and $1,900,000 amounts payable to affiliated companies; current liabilities, $875,792; deferred liabilities, $46,918,494 including $46,233,870 of interest in default, unadjusted credits, $365,343; corporate deficit, $41,593,378; total liabilities $104,469,337.

Prior to the recent hearings, and also at these hearings, certain valuation data prepared by our Bureau of Valuation on the elements of value of the debtor's property were filed in the record by direction of division 4 pursuant to the provisions of section 77 (c) (11) of the Bankruptcy Act. The earlier report related to the debtor's property, costs, and values as of December 31, 1938, and the later report, dated July 7, 1950, reflects these factors as of December 31, 1948. The amounts shown in the valuation data were determined in accordance with the methods frequently explained in the valuation reports of the Commission. Comparison of the two is shown by the following tabulation:

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	1938	1948
Original cost of owned property, except land and rights	$72, 231, 357	$78, 713, 104
Cost of reproduction new	90, 798, 882	91, 972, 933
Cost of reproduction less depreciation	62, 117, 774	60, 709, 278
Value of land and rights	7, 816, 288	6, 810, 711
Includes nonearrier lands in the amount of	1, 977, 513	1, 226, 514
Working capital	1, 872, 909	2, 343, 459

At the recent hearings the staff assistant to the trustees of the debtor in charge of real estate, testified that in his review of the Bureau of Valuation's recent land appraisals he ascertained that the Bureau had used the same unit prices in 1948 as it had used in 1938. He further testified that, in his opinion, an irreducible minimum present value of the debtor's land is $11,702,845. This amount was obtained by applying a percentage of 71.8 (this percentage constitutes the increase in the cost of living in 1948 over 1938 as found by the Bureau of Labor Statistics, Department of Labor) to the Bureau's appraisal of 1938. The witness used this percentage, since time did not permit a complete check of the Bureau's appraisal. The Department of Labor's index represents an average of all relevant factors entering into the cost of living and cannot be said to be representative of any particular one. Accordingly, we do not approve this method of valuing the debtor's land. However, as indicated below, we are convinced that the present value of its land is much higher than the amount included therefor in the Bureau's valuation.

The St. Joe Company employed Robert M. McKey to make a current appraisal of the debtor's main line right-of-way between Northeast Thirty-ninth Street and Flagler Street in Miami, and Walter L. Harris, to make a similar appraisal of certain other land and rights of the debtor in Miami adjacent to this main line right-of-way. Both of these parties are experienced land appraisers familiar with Florida real estate, and McKey was formerly employed by our Bureau of Valuation and made its 1938 appraisal of the debtor's land. Both of them used the same method of appraising land as was used by the Bureau. McKey appraised the right-of-way at $2,001,275 as of the present time, as compared to his 1938 appraisal of this property of about $720,946, which is approximately the amount included therefor in the present valuation figures of the Bureau, and Harris appraised the other property at $6,766,711. The Bureau's valuation of the latter property is not sufficiently detailed in the record to permit comparison with the appraisal by Harris, but if this property increased in value since 1938 in the same ratio as shown above for the adjacent right-of-way, the Bureau's valuation is about 4¼ million dollars too low. Upon consideration of the record, we conclude that for purposes

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of this proceeding, the present value of the debtor's land and rights is about $12,000,000.

Evidence of the value of the salvageable material in the debtor's railroad was also presented by the St. Joe Company at the recent hearings through the chief engineer of the debtor. The estimate of this witness is based on the assumption that such materials and equipment would be purchased at a point where marketed, at prices quoted on the markets for such material. The material is scrap material of the same nature as would be in the debtor if it were scrapped. The value of the material at points where it would be marketed at current prices is estimated by this witness at $42,823,742. He further estimates that the cost of transportation of such material from Jacksonville to the market would be $5,636,426, and that the cost of dismantling and recovery, including transportation to Jacksonville, would be $3,316,466. Net proceeds recoverable of the salvageable materials after dismantlement and delivery to markets where they are bought and sold are estimated by him at $33,870,850.

CONCLUSION AS TO MAXIMUM CAPITALIZATION OF DEBTOR

We have fully discussed the favorable prospects of future operation of the debtor's property as well as certain unfavorable features such as the limited territory served, its vulnerability to competition from competing means of transportation, and increasing operating costs. We have also in the preceding section of this report stated the debtor's recorded investment in road and equipment less recorded depreciation and amortization of $77,488,449 as of December 31, 1949, and its cost of reproduction less depreciation plus value of land and rights and working capital as determined by our Bureau of Valuation as of December 31, 1948, totaling $70,863,384.

If the average annual adjusted earnings of the debtor available for fixed charges and Federal income taxes, as heretofore found by us, of $2,473,064 for the period 1946–49, inclusive, $2,192,353 for 1947–49, inclusive, and $2,520,688 for 1946–50 are capitalized at a rate of 5 percent, the resulting amounts are $49,461,280, $43,847,060, and $50,413,760, respectively, and if capitalized at a rate of 4½ percent, $54,956,978, $48,718,956, and $56,015,289, respectively. Capitalizations at 5 and 4½ percent of the average annual earnings of $3,107,601 for the entire period since the Key West extension was abandoned, 1936–50, inclusive, produce $62,152,020 and $69,057,800, respectively. This period includes the extraordinary earnings realized during the last World War. Capitalizations at 5 and 4½ percent of the normal year earnings of $2,300,000, as hereinbefore determined, produce $46,000,000 and $51,111,111, respectively.

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Upon reconsideration of the former record of this proceeding and consideration of the later additions thereto, including the value of the debtor's assets and its past, present, and probable future earnings considered in light of the particular conditions affecting this debtor's revenues and expenses, it is our opinion and we find that the permissible capitalization of the reorganized debtor should not exceed approximately $46,000,000, exclusive of equipment obligations outstanding on consummation date. If the amount of equipment obligations as of December 31, 1949, ($5,314,086) were added, the capitalization would be approximately $51,314,086.

The maximum capitalization assumes completion of the program for improvements and additions and betterments to the extent completed as of December 31, 1950, assuming completion of the rail-laying program as of that date as predicted by the debtor's trustees at the hearing.

MERITS OF THE VARIOUS PLANS FILED

Having considered the debtor's past, present, and prospective earnings, and having determined its permissible capitalization, it is now appropriate to consider the merits of the various plans filed in the proceeding.

(a) *St. Joe Company plan.*—The hereinbefore described plan of the company contemplates a maximum capitalization at time of consummation of $45,000,000 plus the equipment obligations which would be assumed by the reorganized company. In this respect, therefore, the plan conforms to our previous findings as to the proper capitalization of the reorganized company. The annual charges on the maximum of $20,000,000 of first-mortgage fixed-interest bonds issuable in the reorganization would, together with interest on the existing and expected equipment obligations, total approximately $925,000 per annum. On the basis of average earnings for the 3 years 1947 to 1949, as hereinbefore adjusted, the company would cover such fixed charges approximately 2.37 times and in the normal year approximately 2.49 times, both before taxes, exclusive of funds.

The Coast Line argues that neither the conclusions stated in our prior reports in the proceedings nor the record justify a finding now that the debtor should be permitted to issue fixed interest bearing bonds in the reorganization. In our second supplemental report of January 8, 1945, we concluded on the basis of the record then before us, that no fixed-interest bonds should be issued. We there found that $1,500,000 was a fair estimate of the debtor's future normal year earnings available for interest. That figure represented earnings after income taxes. We herein have found that $2,300,000 represents our estimate on the basis of the supplemented record, of future

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normal year earnings before Federal income taxes and fixed charges, or roughly $1,850,000 after income taxes.

Since 1935, the debtor has failed to earn $925,000 for payment of fixed charges in the year 1937 only, when it earned $736,651 for payment of fixed charges. In 1938 such earnings were $941,896, and in 1940, they were $959,099. In all other years they were over $1,000,000, using all figures as adjusted in this and prior reports. In the second supplemental report we alluded to estimated future savings of $503,000 per annum from expected abandonments, and purchase of Diesel locomotives and passenger cars. The record shows that these changes in general have been accomplished. From the record now before us, we conclude that we could safely approve the issue of a reasonable amount of 4-percent fixed-interest bonds, in an internal reorganization of the debtor. The amount will be left for later determination in this report.

The Coast Line contends that the St. Joe plan is immoral, in that it does not provide for a ratable distribution of the new securities among creditors of the same class. It contends that the willingness of the officers of the St. Joe Company and the trustees of the Du Pont trust to subordinate their claims to those of other bondholders of the same class and to reject a plan which would result in distribution to St. Joe Company and the trust of cash and securities with real worth greater by at least $11,375,000, with the sole purpose of obtaining control of the reorganized company, disregards the interests of the beneficiaries of the Du Pont trust and the minority stockholders of the St. Joe Company. The income from the trust estate under the terms of Du Pont's will, subject to certain annuities and a life interest of Du Pont's widow, is to be devoted to a charitable Delaware foundation for the purpose of maintaining the family estate in Delaware known as "Nemours" as an institution for the care and treatment of crippled children, not incurable, and the care of old men and women, first consideration to be given to residents of the State of Delaware. Any surplus income may be used in contributions to other charitable institutions with the same objectives. The Coast Line further contends that the subordination provision of the St. Joe plan makes the plan vulnerable to successful attack at any time until actually consummated by the State of Delaware on behalf of the charitable foundation or by any minority stockholder of the St. Joe Company.

Because of other conclusions stated herein, it does not appear to us necessary to explore further the question of whether we could approve a plan with the general structure of the plan proposed by the St. Joe Company.

(*b*) *Welbon, Snyder, Claughton & Corbett plan.*—This plan was presented and supported by the testimony of E. N. Claughton in the

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interests of the group of first and refunding bond holders hereinbefore mentioned. The contingent charges on the $45,000,000 of 5-percent income bonds which it proposes, plus the interest charges on equipment obligations would total $2,375,000 annually. If the proposed $5,000,000 of 4-percent fixed-interest bonds were issued soon after reorganization, the total debt would be $50,000,000 plus equipment obligations and the total charges would be $2,575,000. Both debt and charges far exceed those which we believe to be reasonable on the basis of the record. The proposed capitalization of $56,250,000 exceeds by approximately $10,000,000 the capitalization herein approved by us, exclusive of equipment obligations in each instance. We conclude that we should not approve this plan.

(*c*) *Conn plan.*—F. K. Conn, who presented this plan, and supported it by testimony, in his own interest and in the interest of others as a group of holders of first and refunding bonds, has consistently, throughout these proceedings, favored a debt-free reorganization. On brief these interveners urge that such a plan presents the greatest possible financial stability, may be most expeditiously consummated; eliminates valuation problems; does not assume a tax advantage which may be lost through change of the income tax laws; and gives the bondholders the fullest possible measure of recovery from the property securing their bonds.

We hereinbefore have stated our conclusion that the prospective earnings of the debtor's property justify the issue of fixed interest bearing bonds. Certain of the parties have expressed a preference for bonds rather than stock. They now hold a secured debt claim against the debtor and are entitled to receive in the reorganization a form of obligation which as nearly as possible compensates them for the rights which they now hold. Doubtless a debt free reorganization would in a degree reflect some of the advantages ascribed to it by these interveners, but it is our view that in this case the bondholders are entitled at least to the right to elect to receive bonds to the extent that they can be made available. We conclude that we should not approve the Conn plan.

(*d*) *Employees plans.*—On brief, the supporters of the Huggins group plan favor an internal reorganization of the debtor. They argue, among other things, that their plan is financially sound, benefits the bondholders more than any other plan which has been presented, and permits economies of employee operation obtainable in no other manner, and that such operation is more compatible with the public interest than any other plan. The capitalization proposed in these plans exceeds that herein found permissible by at least $6,000,000. The fixed and contingent charges are reasonable in the light of our previous conclusions herein, but there appears no justification for

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asking the bondholders to accept an interest rate as low as 2½ percent for deferred payments on account of the court imposed liens. Two features of these plans, in our opinion, prevent their approval. The success of the proposal to distribute the proceeds of the sale of new bonds depends upon the possibility of the sale of such bonds upon consummation at a price which we would approve. The same is true of the proposed sale of new stock to the employees and to shippers. There is no showing of record that these proposals are practicable.

Furthermore, there is no showing as to the relationship of the possible proceeds of stock sales to the needs of the reorganized company for working capital. Thus the present creditors would be required to accept less than settlement of their entire claims at the same time that part of the securities to which they are entitled are being disposed of to parties not at present financially interested in the assets and without a showing of the need for the funds so raised. We cannot find that the plans proposed by these interveners are either practicable or fair and equitable. For these reasons, aside from any other defects which may exist in their details, we conclude that we cannot approve them.

(*e*) *Coast Line plan.*—These proposals require separate and detailed consideration of each of various factors which will affect our conclusions and will now be discussed.

LEGALITY OF PLAN PROVIDING FOR MERGER OF THE DEBTOR WITH THE COAST LINE

The legality of a plan providing for the reorganization of the debtor by merger of its properties with those of the Coast Line (other statutory requirements being complied with) received detailed consideration in our third and fourth supplemental reports, see 267 I. C. C. 295, 302, and 267 I. C. C. 729, 731, and we see no error in our conclusions with respect thereto.

Judge Hutcheson, speaking for the court of appeals, said (179 Fed. (2d) 543, 544):

> With the first reason, as broadly put by the trial judge, that because the plan provided, over the objection of the bondholders, for merging the debtor with the Coast Line, without having the properties put up for sale, it would not be lawful under the statute, we cannot agree.

also:

> We are in no doubt, however, that a plan providing for what the trial judge broadly called a "forced merger," that is, a merger over the objection of the debtor and all its creditors, might be lawfully certified to the court and lawfully approved and confirmed by it.

and finally:

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In remanding the case, however, for further proceedings, we remand it for the purpose of working out a really fair and equitable plan and without prejudice in doing so to the due consideration of any fair and equitable plan for bringing this matter to an end, including such a plan providing for a merger with, or sale to, the Coast Line, either with or without the approval of the security holders.

Recognizing that desire for control alone was not a legitimate motive for opposing the previous plan, Judge Hutcheson said (179 Fed. (2d) 538):

The trial judge, while using language broader than the precise determination before him required, recognized that this was so, in holding that the fact found by the Commission, that St. Joe bought the bonds it holds with the desire and purpose to use them to own, control, and run the debtor railroad, and that the plan for merger with the Coast Line would frustrate that desire and purpose, was not a reason for refusing to approve the plan.

CONTROL OF THE REORGANIZED DEBTOR

In view of the position taken by many of the representatives of the debtor's first and refunding bondholders with respect to the St. Joe Company's proposed plan, we deem it appropriate to consider first the matter of control of the reorganized debtor by the St. Joe Company. In our third suppplemental report we found that it would not be compatible with the public interest for the St. Joe Company to control the reorganized debtor.

At the recent hearings a representative of the Greater Miami Traffic Association and the Miami Chamber of Commerce, by way of bringing his former testimony down to date, reiterated the position of his associations favoring independent operation of the line, as opposed to the merger with the Coast Line, repeating as reasons, (*a*) the greater likelihood of the development of foreign commerce through the south Florida ports, (*b*) the greater prospect of attention to local interests through an expected local board of directors, and (*c*) the assurance of Ball of the building of a much needed station at Miami.

The St. Joe Company, while denying any basis in the record for our finding adverse to the St. Joe Company on the matter of the public interest, contends that section 17 of its revised plan, a section which is set out above as part of the description of the St. Joe Company's plan, and relates to the preservation of existing routes, neutrality as between connecting lines, et cetera, completely negatives any possibility that it or its affiliates could successfully use its control of the reorganized debtor, if its plan is approved, to adversely affect the public interest, and cites *Atlantic Coast Line R. Co.* v. *United States*, 284 U. S. 288, as authority for the doctrine that the provisions of section 17 of its proposed plan are enforceable.

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We can, and do, impose conditions upon our authorizations of mergers, consolidations, extensions, construction, and the like where only carriers subject to the Interstate Commerce Act are involved. If we impose a condition of neutrality among connections or against the influencing of the routing of traffic other than through legitimate solicitation, we have adequate means of policing carrier violations and enforcing the terms of the conditions. Whether we could impose such conditions upon a party not subject to the act, as for example, the Florida national group of banks, is another matter, and no effective means occur to us of enforcing such conditions. We can, therefore, regard the conditions which the St. Joe Company invites us to impose as only a declaration of policy, and apparently section 17 of the revised plan of the St. Joe Company is presumed to be self-enforcing in largest part. We cannot accept it as such.

At the 1945 hearing, the St. Joe Company placed in the record a statement of policy which included, among other things, the statement that the St. Joe Company would "seek to improve relations with all connecting carriers without discrimination or preference between them." Such statement of policy may be construed as equally broad, though not as detailed, as the conditions which we are asked to impose. We then concluded that there was a sufficient preponderance of evidence to make such a declaration of policy of little significance, and we are presently of the same opinion.

A brief discussion of the commodities clause of the Interstate Commerce Act, by way of supplementation of our references thereto in the third supplemental report, is appropriate. In *United States* v. *Elgin, J. & E. Ry. Co.*, 298 U. S. 492 (1936) a majority of the Supreme Court held that the commodities clause did not bar control of both a carrier and a shipper by the same interests even though it did bar control of a shipper by a carrier. Justice Stone wrote a dissenting opinion, concurred in by two other justices, in which he stated in part:

> The active and continuous control over appellee's finances and expenditures is alone sufficient to create a continuing danger of neglect and abuse of appellee's carrier duties in favor of the dominating production and shipping interest, a temptation and an opportunity which it was the purpose of the commodities clause to forestall.

A similar situation arose in *United States* v. *South Buffalo Ry. Co.*, 333 U. S. 771, in which the Court was asked to overrule its decision in the *Elgin* case, on the ground that the decision misconstrued the act, misunderstood its legislative history, and misapplied the Court's own prior decisions. On these matters the opinion of the majority stated: "It is enough to say that if the *Elgin* case were before us as a case of first impression, its doctrine might not now be approved. But we do not write on a clean slate. What the court has written before is but

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one of a series of events, which convinces us that its overruling or modification should be left to Congress." A dissenting opinion by Justice Rutledge, in which three other justices joined, argues that the doctrine of the *Elgin* case should then be overruled by the Court itself. Thus, while the doctrine of the *Elgin* case technically remains the law, its philosophy has been materially weakened by the *South Buffalo* case, not only by the dissenting opinion of the four justices but by the attitude of the majority in not supporting it except on the ground of *stare decisis*. And strength is thereby added to the force of our view in *Chesapeake & O. Ry. Co. Construction*, 261 I. C. C. 655 (1946), where, speaking with reference to the *Elgin* case decision, we said that "we have not been convinced that the interpretation by the Supreme Court, while undoubtedly binding upon us, truly represented the intent of Congress or reflected sound economic policy."

As stated in our third supplemental report of April 8, 1947, the power and influence which the Du Pont trust can exert is obvious. If the St. Joe Company were permitted to control the reorganized company, there would be a measure of interrelation between that company and the industries it serves which we must consider. While the predominant interests of the Du Pont trust, other than the St. Joe Company, are in banking and real estate, the record justifies the conclusion that the St. Joe Company will probably be an important shipper or receiver of construction materials and other traffic.

In view of the probable continuing development of the controlled properties of the Du Pont interests in Florida, it is reasonable to expect that they will become importantly interested in shipments of freight over the railroads of the State. Through its banking interests, the Du Pont trust would be in a position to influence a great number shippers to route their shipments over any connecting carrier which it may wish to favor.

In *Piedmond & N. Ry. Co. Construction*, 138 I. C. C. 363, a somewhat parallel case in which the applicant, seeking authority to extend its line, was effectively controlled by the Duke interests, we said:

> The competitive nature of the enterprise is aggravated by the association of the applicant with large interests which have the power to control or influence much traffic on other grounds than transportation service.

In his concurring opinion in that proceeding, the late Commissioner Eastman said:

> The evils of interrelation between transportation lines and industries which they serve are manifest. Such arrangements breed privilege and preference, and run counter to the spirit and I believe also, in many cases, the letter of the law. There are enough at present without adding to the sum total, and I trust that we shall soon be able to test the legality of existing interrelations of this character.

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We see nothing to be gained by further repeating our discussion of the control of the reorganized company by the St. Joe Company as it would affect the public interest as contained in our third supplemental report. (See 267 I. C. C. 295, 313.)

The district court stated (81 Fed. Supp. 926):

> I conclude that the matter of compatibility with the public interest is left to the opinion of the Commission and is not to be reviewed by the Judge.

In the opinion of the court of appeals, Judge Hutcheson, in describing the duty of the district court to subject the proceedings to the closest scrutiny, said (179 Fed. (2d) 538):

> He should do this, not to differ from, or take issue with, the view that the majority, rather than the minority, of the commission has rightly decided the public interest matter.

With respect to the position expressed by certain representatives of the first and refunding bond holders to the effect that they believe that approval of the St. Joe Company plan would be to their financial advantage, we say as did Justice Reed in *Ecker* v. *Western Pac. R. Corp.*, 318 U. S. 448, 468, "These reorganizations require something more than contests between adversary interests to produce plans which are fair and in the public interest. When the public interest, as distinguished from private, bulks large in the problem, the solution is largely a function of the legislative and administrative agencies of the government with their facilities and experience in investigating all aspects of the problem and appraising the general interest." Accordingly, in this and other sections of the report we have considered and determined the effect upon the public interest of the plan for a merger, the relative rights of the security holders and the interrelation of those rights with the public interest.

Reargument of this proceeding has indicated the importance of stating more fully our conception of the public interest involved in the disposition of the Florida East Coast. In weighing the evidence relating to the public interest in this proceeding we have been required to avoid taking a narrow or restricted view. We have endeavored, as a body "appointed by law and informed by experience" to call to our aid a long and intimate acquaintance with transportation conditions and with the history of transportation in this country in passing judgment on all questions of public interest. We are mindful of the fact that railroad managements change over the years and that we must look deeper than personalities, even though they may have a bearing on the issues, in seeking to find where the immediate and long-range interests of the public lie in a situation such as here presented.

The issue before us is whether the public interest will be better served by continuation of the Florida East Coast as a stub-end rail-

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road but under the control of the Du Pont interests, or by its integration into a large railroad system.

One of the most important lessons to be gathered from the history of transportation in the United States is that there is an inherent weakness in independent stub-end railroads such as the Florida East Coast. As the history of this carrier indicates, railroads of this type commonly are unable to cope fully or effectively with the cycles of changes in volume of traffic. Also, traffic local to such lines may be particularly vulnerable to truck competition.

Overhead, or bridge, traffic is generally regarded as attractive added traffic, and the Florida East Coast's geographical characteristics are such that bridge traffic constitutes but a very negligible portion of total tonnage transported. The Florida East Coast's relatively large proportion of local traffic is particularly vulnerable to competition from other forms of transportation. Neighboring trunk-line railroads are better situated from standpoint of balanced traffic, and therefore may reasonably expect a more stable flow of business.

In addition, large systems offer formidable competition. Thus, the Florida East Coast has to meet the competition of the parallel line of a major railroad between West Palm Beach and Miami.

A stub-end railroad such as the Florida East Coast is akin in its economic characteristics to a secondary main line or a major branch line of a large system. Because of such value they have as feeders or otherwise, and of the obligation to serve the public dependent upon them, such lines are continued in service, although often their operation proves less remunerative than might be desired, and standing alone, without regard to their "feeder" value, such lines do not have sufficient earning power for successful operation.

The specific provisions of the Transportation Act of 1920 which looked to the relief of weaker roads through consolidations and otherwise have been eliminated, but the general intent that the stronger lines with more varied traffic shall give support to the weaker roads persists.

In addition to the financial weaknesses generally characteristic of short, stub-end railroads, there are difficulties in so integrating their services with those of other railroads so that impediments to the free flow of traffic to and from all sections of the country may be kept at a minimum. This lesson of experience is one which we cannot overlook in the discharge of our duties in proceedings of the kind here before us. The country is broad and its traffic is expansive in volume, in the variety of commodities which constitute articles of trade, and, in a basic sense, in the radii of distribution of commodities, as well as in the range of travel of people. If commercial intercourse between all sections is to be fostered, as clearly is the intent of Congress, there

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must be not merely adequate transportation facilities in a quantitative sense, but an integration of such facilities so that they will be able to function as nearly as possible as a national unit.

We may have tended to forget that one of the serious problems in the early days of railroads was the devising of ways and means of assuring a sufficient integration of different lines to enable commerce to flow freely from one road to another without unnecessary interruptions or other frictions. A partial attempt was made to deal with this problem in the Garfield Act of 1866 (14 Stat. L. 66).[11] The States lacked power to deal adequately with this problem and Congress inserted a provision (section 7) in the original Act to Regulate Commerce specifically to deal, so far as possible, with obstructions set up for competitive reasons. A body of statutory and administrative law has grown up which reflects the public interest in the relations among carriers, though it also recognizes certain rights of the carriers to the traffic they are in position to route.

The national transportation policy, which Congress in recent years has carefully framed for our general guidance, sets forth clearly the major objectives to be sought in respect of our transportation system. They are, in substance, that we should exercise our powers to the end of developing, coordinating, and preserving a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service, and of the national defense.

There can be no doubt that Congress was familiar with the history of past efforts to provide the country with an adequate system of rail transportation. It clearly has recognized, among other things, that there should be coordination between the different segments of the railroad network so that it may function as a national transportation system. The public interest in any part of this network has a national aspect and is not limited to the interests of the local communities involved.

Much has been said on this record about the desirability of continuing the Florida East Coast as a "local institution." There is no doubt but that the Florida East Coast has contributed greatly to the development of the section of Florida it was designed to serve, or that additional contributions of this kind may be expected of it in the future. The desire to retain this carrier in local hands is understandable; but, as shown elsewhere herein, more is to be gained by local

[11] This act authorized "every railroad company to carry all passengers, * * * freight and property on their way from any State to another State and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination * * *" It also, however, did not debar State refusal of authority to build new lines or connections and so was only a partial effort to overcome obstacles to interstate commerce set up by certain States and railroads.

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interests in the long-term future by its becoming a part of the trunk-line railroad system.

The Florida East Coast has been and is, however, a local institution in only a narrow view. From the beginning it has been a party to the transportation of goods to and from all parts of the United States. As a carrier of passengers, it has joined in the provision of service to every section of the country. The area it serves is an integral part of the productive facilities and of the markets of the entire United States. As part of a national network of lines, its purely local aspects must be considered in the light of these broader ones. In reaching our decision, we necessarily have given great weight to the needs of transportation service as a whole and to the need for integration of its manifold parts.

Obstructions to the efficient flow of commerce to and from the section of the Florida peninsula served by the Florida East Coast would be lessened by the acquisition of this carrier by the Coast Line. Factors which would contribute to this end include the substitution of through movements for interchange arrangements, single-line instead of joint hauls on much traffic, more efficient use of fixed facilities, and more complete service to shippers in the matter of providing better reconsignment service, tracing, rate information, and market information services. These and other factors have been discussed in prior reports.

These advantages in operation and service do not signify, however, that the railroads which oppose the merger necessarily would suffer a material reduction in the volume of traffic they now deliver to or receive from the Florida East Coast at its Jacksonville gateway. There is also, of course, an important public interest in the welfare of these railroads. We are requiring that the Jacksonville gateway be kept open on the terms which exist at present. Aside from the direct competition between Seaboard and the merged company for traffic originating at or destined to points between West Palm Beach and Miami, both inclusive, there would be every incentive for those other roads to seek to share in the movement of traffic originating at or destined to points north of West Palm Beach.

The solicitation efforts of those other railroads should be facilitated to the extent that there may be shipper opposition to the merger, though we have concluded that the extent of such opposition has been exaggerated. We have concluded elsewhere that competition will be increased rather than lessened by the merger, on the basis that shippers and carriers will show an active interest in maintaining competition through routing and solicitation practices which will be open to them and through improved service. On the other hand, if we were to approve the St. Joe Company plan, Coast Line would face the possi-

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bility of concerted efforts to disturb important long-standing traffic relationships. In a broad view of the situation, we have found that the effects of the merger upon other railroads would not be such as might be detrimental to the public interest.

The benefits of end-to-end consolidations have been illustrated numerous times in our transportation history. Many of the railroads which form the backbone of our present railroad system, particularly east of the Mississippi River, are the results of consolidations and mergers of this kind. As a rule, short independent lines, built with local capital to serve local interests, soon were found to have limited chances of success, and their separate ownership and operation and efforts to favor local interests made them obstacles to the rendering of the efficient transportation service required for the development of the country. Combined into through lines, they became the essential arteries of an expanding trade which benefited broad sections of the country.

In more recent years we have approved a number of important end-to-end consolidations as being in the public interest. In *Gulf, M. & O. R. Co. Purchase Securities*, 261 I. C. C. 405 (1945) in which we permitted purchase by a southern system of properties of the Alton Railroad and certain related acquisitions and leases, we said: "In the present record the testimony is that the transaction will join the Alton lines with a strong system that is able to furnish more efficient and better freight and passenger service, and will assure permanency of service." A real community of interest was found between these complementary lines. "In the present proposal the two lines are to constitute a single unit and the financial results of the operation will be enjoyed by both." (Page 435.) "The expected greater return on investment is due in the main to opportunities offered by unification for increasing combined revenues through holding traffic to system rails for longer hauls." *Alton R. Co. Reorganization*, 261 I. C. C. 343 (361).

In *Pere Marquette Ry. Co. Merger*, 267 I. C. C. 207 (1947) we found that the proposed merger with the Chesapeake & Ohio would increase competition (page 233) and would not adversely affect adequate transportation service (page 234). While the Pere Marquette had more widespread operations and involved less definite end-to-end relationships than the Florida East Coast-Coast Line merger, and had been more successful financially than the Florida East Coast, our general conclusions in that proceeding have much pertinency here. We found that "merger of the Pere Marquette into the Chesapeake & Ohio should be of substantial benefit to both parties to the transaction; and should be to the advantage of the public in affording the Pere Marquette a higher degree of stability at times of stress,

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through increased support of the Chesapeake & Ohio, as owner of the property. Specifically, patrons of the Pere Marquette would have greater assurance of continued service, at least over more important system arteries, and all shippers should reap the advantage of single-line hauls and rates which combination of the two systems will make possible." (Page 253.) All then existing routes and channels of trade via existing junctions and gateways were required to be maintained and kept open, unless and until we ordered otherwise (page 253).

An earlier decision, *Ann Arbor R. Co. Control*, 105 I. C. C. 43 (1925) also involved a railroad which served the Michigan peninsula. Again, more than an end-to-end combination was involved, but an important through route fell in this category. It was testified that the road had suffered by reason of limited financial resources, that its surplus earnings, put back into the properties, had not sufficed to keep the line abreast of the growth of traffic, and that, after the proposed acquisition, it would be able to obtain funds from the Wabash to develop its properties, increase its capacity, and improve its service. We found that acquision of control would benefit the Wabash, the Ann Arbor, and the public (page 46).

We conclude that it has been a sound policy to consolidate railroads end-to-end for the purpose of adequately serving the public interest. It has been sound from the standpoint of the investors, shippers, and patrons, and also from the standpoint of the country as a whole.

Railroads and other common carriers, by the very nature of their functions, should be free of control by shippers so that they can be public carriers in the true sense of that term and serve all their patrons without the possibility of preference or privilege to the controlling interest. This basic concept of equality of treatment goes back to the common law, is expressed in the Interstate Commerce Act and in State acts, and has been upheld by the courts. It is true that industry control has made many inroads on our common-carrier system, but most of the roads presently so controlled are small and often were constructed to serve a particular industry which otherwise lacked transportation service, or were taken over to forestall their abandonment. We consider industry control, per se, an unsound policy and one to be avoided wherever it is practicable to do so. Industry control has added greatly to the difficulties of adequate enforcement of the Interstate Commerce Act. We have taken steps to prevent such control where it could not clearly be found to be consistent with the public interest and to overcome its undesirable effects where it does exist, to the extent in either case that we could do so under the statutes and decisions of the courts.

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The United States Supreme Court has defined the term "public interest" as requiring "appropriate provision and best use of transportation facilities," *New York Central Securities Corp.* v. *United States*, 287 U. S. 12. We find from the record now before us that the best and most efficient use of the transportation facilities of the debtor's railroad will result from its operation by the Coast Line rather than by the St. Joe Company. We are satisfied that the record supports our prior findings as to the public interest and we adhere to and affirm those findings.

To the suggestions that a plan could be formulated providing for an internal reorganization without St. Joe Company control, we see no practical or legal method by which the latter objective can be attained, and at the same time provide equitable treatment of the debtor's creditors, other than by a voting trust. Even then, the voting trust would have to be for an indefinite period. Provisions for voting trusts approved by us and the courts in other reorganization plans have been for relatively short periods, and have been directed toward seeing that the management of the reorganized debtors during formative years would not be disrupted through acquisition of control by speculative interests. Such a problem is not present here. For reasons stated in our third and fourth supplemental reports, and for reasons hereinafter stated, we believe that a reorganization of the debtor which will be compatible with the public interest and will preserve the equities of the debtor's creditors can be effected through unification.

MERGER OF THE DEBTOR WITH THE COAST LINE AS IT RELATES TO THE PUBLIC INTEREST

In our third supplemental report we discussed in detail the evidence of record and found that the merger of the debtor with the Coast Line would be compatible with the public interest. In making that ultimate finding, we found that (1) there would be betterment of service to the public resulting from a unification of the debtor's properties with the Coast Line, (2) the merger of the debtor with the Coast Line would be of appreciable benefit in assuring greater financial stability for the debtor, (3) the apprehensions of the citizens and communities of the east coast of Florida that a merger would adversely affect their interests are not justified, (4) the interests of the railroad employees effected by the merger would be adequately protected, (5) there would result savings from a unification of the two carriers, and (6) the effect of merger upon the Southern Railway system and Seaboard Air Line Railroad Company, if any, would not adversely affect the public interest. We will discuss these matters in the light of the amplified record. While the evidence received at the recent hearings might be considered as bearing to some extent on the first four of these factors,

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only with respect to the last two was any direct evidence introduced, except that a representative of the Greater Miami Traffic Association repeated to a great extent the testimony (hereinbefore more particularly referred to) which he had given theretofore.

Service to the public.—No additional evidence with respect to the prospect, in the event of a merger, of betterment of service to the public was introduced at the further hearings in 1950. In our former report, 267 I. C. C. 295 at page 318, we reviewed in considerable detail the evidence on this subject previously included in the record and concluded that there would be a betterment of service resulting from a unification of the two properties. As to passenger service, we found that some conveniences might result although most, if not all, would be such as could be realized, if deemed sufficiently advantageous, by arrangement between an independently reorganized debtor and the Coast Line. We expressed doubt, however, that any such agreement would be reached by the two carriers.

As to freight service, we found that the evidence of public benefit was more substantial. We pointed out that, at present, shippers on the debtor's line must communicate, sometimes at extra expense and possible inconvenience, with Coast Line agents in order to obtain diversions or reconsignments of their shipments after they have been transferred to the Coast Line at Jacksonville. Some benefit from extended transit arrangements might result from the unification.

There was also evidence that there would be a saving to shippers, in case of a merger, on reciprocal switching on shipments to or from industries located on the debtor's or Coast Line's tracks at Jacksonville and South Jacksonville. Although the traffic manager of the Jacksonville Chamber of Commerce testified that the majority of the industries in Jacksonville are not located on the Coast Line's or debtor's tracks, but on those of the Southern, Seaboard, and Jacksonville Terminal Company, the Coast Line referred to a statement in our report in *Switching at Jacksonville, Fla.*, 266 I. C. C. 7, where we said:

> Industries and docks at Jacksonville served by respondent [St. John's River Terminal Company], the Coast Line, and Seaboard, respectively, total approximately 95, 120, and 115, respectively, with 1 on the Florida East Coast, 19 on the Jacksonville Terminal, and 5 on the Municipal Terminal the grand total being approximately 355, 28 being served by 2 or more carriers jointly.

We found in our former report that there would be little, if any, economy or convenience served by a pooling of either locomotive or freight-car equipment in the event of a merger.

One advantage from unification of the properties to which we referred would be a saving in the number of locomotives used during the sugarcane grinding season in serving the plant of the U. S. Sugar

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Corporation at Clewiston, Fla., which is 10 miles west of Lake Harbor, Fla. At present the debtor's engines and crews transport a large part of the sugarcane used by the plant from the eastward Canal Point area to Lake Harbor, and the Coast Line's engines and crews complete the haul from Lake Harbor to Clewiston.

We found the record inconclusive as to whether the freight movement over the two roads would be facilitated by consolidation of the debtor's and Coast Line's interchange yards at Bowden and Moncrief, respectively. As to any betterment of service or convenience to the public from a consolidation of the freight stations of the two carriers at Jacksonville, we found that the possibility of the unification better serving the public convenience is minimized by the fact that the two stations now adjoin each other, one-half of the same building being utilized by each carrier.

We referred to and summarized in our former report the evidence introduced by two witnesses, Ayers and McWilliams, with respect to their independent comparative studies of certain selected ratios, obtained from railroad operating statistics compiled by us, the purpose being to determine the relative efficiency of operation of the debtor and of the Coast Line during the period 1936–40. Both witnesses considered this a period of normal operations. As we stated in our former report, a very few of the ratios were favorable to the Coast Line but the general result from both studies indicated in the opinion of the witnesses that the debtor was operated during the period under consideration more efficiently than was the Coast Line, especially as to utilization of manpower and equipment and consumption of fuel. The Coast Line considers that the studies are wholly unreliable as measures of comparative operating efficiency largely because of the dissimilarity of the two railroads, the Coast Line having more light density mileage, much of it branch line mileage, and performing more kinds of transportation than the debtor.

At the last hearing in 1950, McWilliams supplemented his former study, which covered the period 1936–40, with a similar exhibit covering the period 1946–49. The result, he contends, indicates the same greater efficiency of operation of the debtor during the later period. For the reasons advanced by the Coast Line and because the studies do not reflect the physical characteristics of the respective properties, we consider that the studies are not conclusive of the conclusions drawn from them by the witnesses. The Coast Line does not question the fact that the debtor is presently being efficiently operated.

Upon consideration of the entire record, we affirm our previous conclusion that there would be betterment of service to the public resulting from a unification of the debtor's line with that of the Coast Line.

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Future financial stability of the debtor.—In our report of April 8, 1947, we concluded that a merger of the debtor with the Coast Line would provide a broader and better basis upon which new capital funds might be obtained, and that the financing of the future requirements of the debtor's line would be supported by the credit of a large trunk line having a reasonably successful history of earnings in the past. Coast Line also has a history of never having defaulted upon an obligation, either principal or interest.

The St. Joe Company challenges that conclusion, asserting that, after exclusion of dividends received from the Louisville and Nashville, Coast Line's coverage of fixed charges in recent years has averaged about one and one-third times, which the St. Joe Company does not regard as adequate, further, that prices at which Coast Line securities are selling on the market in comparison with prices of securities of other railroads, also the alleged unsatisfactory result of a recent bond exchange offer made by Coast Line, are not sufficient to inspire confidence in the credit of Coast Line.

In connection with the holdings by Coast Line of Louisville and Nashville stock, in our report of April 8, 1947, we stated "There is no assurance, however, that these shares of stock, constituting an unpledged asset of the Coast Line, may not be sold in the future, if the Coast Line so desires." That statement seems to have been misunderstood by some of the parties. We had no intention of indicating that the stock of the L. & N. would be a more valuable asset if pledged than if unpledged, but rather were simply recognizing a contention of some of the opponents of the Coast Line plan then under consideration.

There is no good reason to exclude L. & N. dividends from Coast Line earnings for the purpose of measuring financial stability, nor to disregard Coast Line's holdings of L. & N. stock as an asset entering into Coast Line's financial stability. A witness for Coast Line stated that he had been authorized to say that Coast Line does not have any though of selling the L. & N. stock which it owns. It is clear that, if they should become bondholders and stockholders of the Coast Line, the present creditors of the debtor would benefit in the same way from the Coast Line's ownership of L. & N. stock and the receipt of dividends thereon as they would benefit from Coast Line's ownership of other assets and receipt of other income, and, to some extent, more so, because of the 85-percent dividend credit under present tax laws.

All of Coast Line's bond issues are currently selling on the market above par. Coast Line has recently created a new mortgage, known as its general mortgage, described as "being created for the purpose of providing the Company with a modern, flexible, financing medium designed eventually to replace its two existing mortgages."

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The first consolidated mortgage bonds o fCoast Line mature in July 1952. To anticipate a portion of that maturity, Coast Line offered in exchange for those bonds new bonds to be issued under its general mortgage. Pursuant to the exchange offer, $27,536,000 principal amount of first consolidateds of the total issue then outstanding of $50,724,000 were turned in for exchange for new general-mortgage bonds. A witness for Coast Line offered the opinion that the principal reason why a greater number of bonds had not been exchanged was that commercial banks and others interested in short-term yields regarded the 1952 maturity as an attractive short-term investment, and were unwilling to exchange for a longer-term security. It is reasonable to suppose that as a high-grade security approaches maturity, a considerable amount will gravitate into the hands of short-term investors. The bond exchange offer seems to have been reasonably successful.

The Coast Line has in its treasury a considerable amount of unissued bonds constituting a part of a seasoned issue already outstanding, which issue is now selling above par. A part of these bonds will be required for deposit as collateral under Coast Line's new general mortgage, but a substantial principal amount will remain available for sale in the future, if sale should be necessary or desirable.

With exception of the Conn plan, all of the proposed plans for an internal reorganization provide for issuance immediately upon reorganization of a substantial principal amount of bonds, bearing either fixed or contingent interest, and whether the first mortgage under an internal reorganization would provide a reliable financing medium for the future is questionable.

During the period 1939–49, Coast Line increased its gross investment in road and equipment by $113,185,032, and during the same period reduced its debt, exclusive of equipment obligations, by $63,038,630. Increase in corporate surplus from December 31, 1938, to December 31, 1949, amounted to $85,942,392.

We affirm our previous finding that a merger of the debtor with the Coast Line will be of appreciable benefit in assuring greater financial stability for the debtor.

Representatives of shippers, communities, and public representatives.—It seems appropriate to repeat in part the discussion in our report of April 8, 1947, concerning representations of shippers, communities, and public representatives.

The witnesses who testified in this classification fall into three categories:

(1) Those favoring Coast Line operation and control.
(2) Those favoring Du Pont estate operation and control.
(3) Those favoring independent operation and control.

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The witnesses in the first category were largely shippers; those in the last two categories principally community interests and public representatives. There was a considerable number of witnesses in each category.

The witnesses favoring Coast Line operation and control included shippers whose residences and business locations bracketed the entire Florida peninsula, among them some of the most important users of the Florida East Coast Railway. The reasons given by those witnesses in favor of a merger were as varied as their occupations. In general, they emphasized the continued good service, based upon experience, rendered by the Coast Line at all points and a definite preference for operation of the Florida East Coast as part of a trunk-line system. From a trunk-line system, specifically the Coast Line, they receive valuable market information through an extensive freight traffic organization, information on shipments in transit, service in connection with reconsignments, diversions and tracing of shipments beyond the terminals of the railroad with whom they deal, valuable rate information, and other services. They preferred trunk-line operation because it meant to them more equipment, time saved, and operating economies. They cited the help of the Coast Line in building up agricultural resources and emphasized Coast Line's long experience in handling fruits and vegetables. To various of those witnesses a merger meant a single-line haul, elimination of switching charges, better cross-State transportation, and other advantages. Although improved service was uppermost in the minds of those shipper witnesses, many of them welcomed the increased competition which a merger would bring about through affording opportunity for short hauling the originating line north of Jacksonville. At present, the Florida East Coast is assured of all rail transportation between West Palm Beach and Jacksonville (excluding both points) and has no interest in hauls north of Jacksonville. If the Coast Line and Florida East Coast are unified, many of the shippers feel they will be enabled to stimulate competition in service by short hauling the Coast Line north of Jacksonville if they are unable to obtain the service to which they feel entitled, in view of the Coast Line's promise to maintain all existing through routes via Jacksonville in connection with Seaboard Air Line Railroad Company and Southern Railway system.

While counsel for St. Joe Company undertook to discount the testimony of all witnesses not actually residents of the east coast of Florida, the testimony of witnesses from other parts of the State as to actual experience with the Coast Line is valuable as indicative of what shippers on the east coast can expect, since the situation on the east coast after unification will be similar to that in other parts of the State at the present time.

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In our previous report we discussed the interest in this proceeding manifested at the hearings by many of the communities along the line of the debtor. They opposed the proposed merger of the debtor's property with the Coast Line, fearing an adverse effect on Jacksonville and southeast Florida ports and upon the railroad service which they would be afforded and which they considered would be less sympathetic to the requirements and conveniences of shippers in their territory than under independent management. They also contend that unification of the two railroads would have an adverse effect upon the business and tax revenues of their communities owing to abandonment of many of the railroad facilities now being maintained at certain points on the debtor's line, notably Fort Pierce, a division point at which 75 to 100 employees are employed, New Smyrna Beach, with 368 resident employees and, especially, at St. Augustine, where the debtor's principal shops, general offices, and hospital are located. About 900 railroad employees live at the latter point and, with their dependents, approximate one-third of the 12,500 inhabitants of the city.

At the 1950 hearings, Coast Line's vice president in charge of operation testified that, because of the crowded condition of Coast Line's general offices at Wilmington, N. C., some part of the general offices of the merged organization might be maintained at St. Augustine. There is nothing unusual in the general offices of a large railroad being divided among two or more locations, and the matter of savings through unification is not dependent upon consolidation of the general offices at a single location. He also testified that the hospital at St. Augustine would be retained. Therefore, it appears that the impact upon St. Augustine of the merger may be less pronounced than anticipated in our report of April 8, 1947.

Since it is necessary for any railroad to maintain district headquarters, shops, et cetera, at strategic locations, there seems to be no reason why Fort Pierce, New Smyrna Beach, or other communities along the line of the debtor should be adversely affected by the merger.

Interests of debtor's employees.—With respect to the interests of the debtor's employees, the vice president in charge of operations of the Coast Line, testified that, in the event the debtor were merged with the Coast Line, the Coast Line agrees that the employees would have all of the protection afforded by section 5 (2) (f) of the Interstate Commerce Act or by the provisions of the previous plan, as well as of the protection afforded by the Washington Job Protection Agreement, to which the Coast Line and the employee organizations are parties, and, in addition, to the extent that it considers practicable, the Coast Line would undertake to see to it that the unification would not result in the dismissal of employees of the debtor after the 4-year protection

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period provided in section III of its proposed revised plan, but it would reserve the right to dismiss employees of the Florida East Coast after the expiration of the 4-year period.[12]

It also is noted that the Coast Line agrees that the 4-year period referred to in section III of the plan would not commence to run on the date of the order approving the plan, but would commence to run on the date when the property is transferred to it, and it also agrees that section III prevents the dismissal of any employee as a result of the unification during the period referred to in section III.

Our approval of a plan which contemplates a merger of the debtor with the Coast Line should include a provision that, as a condition of approval of such a merger, there shall be a fair and equitable arrangement to protect the interests of the railroad employees affected, as required by law, and similar to the conditions imposed in *Chicago & N. W. Ry. Co. Merger*, 261 I. C. C. 672, and we will further provide that the period covered by such agreement shall not commence to run on the date of the order approving the plan, but on the date when the property is transferred to the Coast Line. We affirm our previous conclusion and find that the interests of the railroad employees affected by the merger will be adequately protected.

Savings from unification with Coast Line.—The former record of this proceeding contains considerable evidence with respect to the savings in operating expenses which may be expected to be eventually realized from a merger of the debtor with the Coast Line, which we summarized in our third supplemental report, 267 I. C. C. commencing on page 322, and arrived at the conclusion that such savings should amount to between $350,000 and $1,000,000 per annum.

The evidence previously adduced on this matter was greatly amplified at the reopened hearings held in 1950, a substantial part of the record of those hearing being devoted to this subject. The Coast Line produced its vice president in charge of accounts, its vice president in charge of operation, its vice president in charge of traffic, and a number of other accounting, operating, and transportation officers as witnesses who introduced in the record exhibits prepared by them or under their general supervision with the assistance of other officers of the Coast Line having direct supervision over the various departments, showing the eventual savings in operating expenses which may be expected to flow from integration of the separate operations. The Coast Line's witnesses, in general, approached this problem by studying and analyzing the present yearly expenses of operating identical departments of the two railroads and determining the size and cost of the force which would be necessary to operate similar departments

[12] The witness further stated that the Coast Line would stand by the stipulation previously made by it as contained in footnote 4 on page 298 of 267 I. C. C. 295.

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effectively and economically under unified operation. They determined in their study that with one exception [13] the work of the integrated railroads could be performed by 319 [14] fewer persons than are presently required to perform the work of both companies. In other words, integration of the 2 operations would eventually result in a reduction of the present forces of the 2 railroads by 319 employees or positions. As to the basic principles governing this determination, Coast Line's vice president in charge of accounts testified:

> Our disposition of those men in the integrated organization was based upon, first, what we considered to be the need of the integrated organization in the way of personnel to perform its functions; second, on our general knowledge, after a lifetime of experience in the work that the Florida East Coast employees in the accounting department, or any other department, must do in order to fulfill the duties that are imposed upon the * * * department; third, on our general knowledge from the description of the job and the amount of pay as to what general duties of that particular employee must be.

It appears that the studies of the Coast Line's witnesses were not directed so much to the work of individual employees as to the overall volume and type of work which would be required upon a merger of the railroads and the size of the force that would be required to perform it. The Coast Line emphasizes that the estimated savings from consolidation are those which would progressively and eventually be realized. According to the Coast Line, the reduction in the combined forces would largely be affected by deaths, retirements, and resignations. Under the Coast Line's plan, the employees of both roads would be protected by a condition substantially the same as the one we imposed for their protection in the third supplemental report.

The Coast Line's conclusion is that the total savings which may reasonably be expected to be eventually realized from a merger of the debtor and the Coast Line would be about $1,557,647 per annum, of which about $1,168,541 would represent savings in the cost of administrative forces, $293,586 would represent savings achieved from consolidating the debtor's Bowden interchange yard and shops at South Jacksonville with the Coast Line's Moncrief yard and shops in Jacksonville, and $95,520 would result from unification of their freight stations at Jacksonville.

The St. Joe Company devoted an equal amount of time and effort to the preparation and presentation of studies to rebut those of the Coast Line. Its determination of economies which might be expected as a result of unified operation is based on studies made by J. C. Mc-

[13] The exhibits do not show the number of employees involved in the operation of the Coast Line's Moncrief yard or the debtor's Bowden yard or the number that would be required if these yards were consolidated.

[14] This figure is computed as 333 by the St. Joe Company by using data covering integration of the Jacksonville freight stations for the month of December 1949, instead of an average for the 12 months shown in the Coast Line's exhibit.

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Williams, who had testified previously for the St. Joe Company, supplemented as to the consolidation of the Jacksonville terminal facilities by testimony of operating witnesses better qualified to testify upon that subject.

The St. Joe Company examined the Coast Line's claims from two standpoints, the first of which is historical. On January 1, 1946, the Coast Line absorbed the Atlanta, Birmingham and Coast Railroad Company, and the general administrative forces of the two railroads were integrated. The St. Joe Company points out that although in 1949 after integration the traffic handled by the Coast Line was substantially less than that handled by the two railroads in 1945 before integration, the workdays of supervisory forces were substantially larger. It contends that this comparison of actual performance during those years demonstrates that neither decreased traffic nor consolidation with another railroad enabled the Coast Line to decrease supervisory or administrative expenses.

Workdays of supervisory forces hardly constitutes a satisfactory index for the purpose used by the St. Joe Company when taken in connection with volume of traffic, for the reason that there is evidence of record that, since acquisition of the properties of the former Atlanta, Birmingham and Coast, Coast Line has undertaken a program of rehabilitation and modernization of those properties designed to bring them up to Coast Line standards, which program, it can be assumed, is requiring more extensive supervision than did the normal maintenance activities of the former Atlanta, Birmingham and Coast.

The St. Joe Company's second analysis of the Coast Line's claimed saving is based upon a detailed study of the actual studies performed by the debtor's administrative employees including those whose positions would be eliminated under the Coast Line's studies. From this examination, the witness for the St. Joe Company classified the positions eliminated by the Coast Line under four categories, (1) those impossible of elimination upon integration because they involved duties which would be required to be performed after integration; (2) those which could be eliminated upon integration but the elimination of which would be improvident, i. e., at a sacrifice of efficiency, and which in certain instances would require eventual replacement by establishment of other positions, not necessarily of equal rank but performing some of the same functions; (3) those which could be eliminated upon integration without sacrificing efficiency; and (4) those which could be eliminated under any reorganization or by the debtor before reorganization. From these data he arrived at a conclusion that of the total of $1,168,451 of administrative savings claimed by the Coast Line, $403,427, would be impossible because they represent elimination of employees who perform duties which would have

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to be performed by some one after integration; $292,481, represents salaries of supervisory officers and employees who could be eliminated upon integration at the sacrifice of close supervision and in the long run at the expense of efficiency; $135,983 represents elimination of positions which could now be eliminated or would not be necessary after any reorganization; and the remainder of $336,650 represents maximum possible savings by integration of which $215,801 covers the elimination of debtor's outside freight and passenger offices concerning which he was unable to investigate.

The Coast Line criticizes McWilliams' study on the general grounds of his qualifications, being a statistician without practical administrative experience, and particularly because it is on a fundamentally erroneous basis since no attempt was made to determine the kind of organization necessary to do the work of the combined enterprise.

On the other hand, the St. Joe Company criticizes Coast Line's study on the grounds that no investigation was made to develop specific knowledge of the duties performed by individual employees whose positions would be eliminated under the proposal.

There appears to be no question about the saving upon integration of $336,650 in administrative expenses with respect to which both the Coast Line and the St. Joe Company are in agreement, and the only question presented with respect to an additional saving of $135,983 included in the Coast Line's estimate and designated by the St. Joe Company as "nondependent" is one of classification. No doubt a number of the positions included in the nondependent category by the St. Joe Company such as these connected with the trustee's office would disappear upon any reorganization but other positions would be eliminated only if the debtor was merged with the Coast Line. We believe that about 25 percent of the amount classified by the St. Joe Company as nondependent should be credited to integration. We believe also that the supervisory forces estimated by the Coast Line for the integrated service are generally adequate, and a large proportion of the $292,481 which the St. Joe Company classifies as improvident because close supervision would be sacrificed, could be economically realized. We have also considered the Coast Line's estimated savings in the administrative forces of $403,427 which the St. Joe Company classifies as impossible of realization and in our opinion about 20 percent thereof could be realized.

As previously observed, the Coast Line claims total annual savings of $293,586 by consolidating the debtor's Bowden yards and shops with its Moncrief yards and shops of which $104,148 would result from consolidation of the shops and $189,438 would be realized from consolidation of the yards. The witnesses for the St. Joe Company concede that the Moncrief shops are adequate to handle an integrated

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operation and that consolidation of the shops would be feasible if the yards were consolidated at Moncrief, but they contend that consolidation of the yards is not possible because the facilities at Moncrief are incapable of economically handling an integrated operation. They stated that they have at times observed congestion in the Moncrief yard with the Coast Line's present traffic and that the addition of the debtor's traffic would only serve to aggravate that condition and would probably result in wasting rather than saving money.

In rebuttal the Coast Line's witness testified that its Moncrief yard is adequate to handle the traffic moving to, from, or through Jacksonville on its and the debtor's lines without extending the present yard tracks but that if any congestion should develop it is practicable either to extend the present yard tracks or to add additional tracks at that location on land now owned by the Coast Line and available for that purpose. Generally the witnesses agree that if it is possible from a traffic standpoint to consolidate these yards, a savings in operating expenses could be realized. In our opinion, such consolidation is feasible even though it involves construction of additional tracks in the Moncrief yard.

We have reviewed the evidence and conclude that upon integration of the shops virtually all of the savings claimed by the Coast Line in the cost of supervision of the locomotive and car departments and in the cost of operating a crane, about 50 percent of those claimed in the cost of engine hostlers and helpers and other engine house expenses, and about 75 percent of those claimed in the cost of inspection could be realized; and upon integration of the yards, about 75 percent of the savings claimed in the costs of switch engines, and switch-engine fuel and virtually all of the other savings, less about $46,000 representing the additional cost of operating trains between the Moncrief and Bowden yards and payments now received from other railroads for services which would be eliminated upon integration, could be realized.

The freight stations of the debtor and the Coast Line at Jacksonville are located in the same building which is served by 4 tracks located side by side of which 2 tracks of 29-car capacity are utilized by the debtor and 2 tracks of 30-car capacity are utilized by the Coast Line. As previously noted, the Coast Line claims a savings of $95,520 per annum from consolidation of these stations, estimated as the difference between the aggregate cost of their separate operation and the estimated cost of their integrated operation. The Coast Line's proposal involves a different operation of the station tracks from that now prevailing, which the St. Joe Company contends is impracticable. The latter conceded however that integration of the two facilities might result in the elimination of at least one supervisory officer and a few employees. We conclude that consolidation of the two stations is feasible

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and that a relatively small portion of the Coast Line's estimated savings of $95,590 could be realized.

From a review of all the facts of record on prospective savings from unification of the two railroads, we find that the amount of such savings eventually realizable from a merger should amount to between $850,000 and $1,000,000 per annum.

Contentions of the Southern and Seaboard.—Further testimony in support of its contention that the merger of the debtor with the Coast Line would affect its revenues to such an extent that it would be against the public interest to authorize it was presented by the Southern Railway system through its vice president in charge of traffic, who recited statistics with respect to the growth of the territory served by the debtor, and the substantial increase in the revenues received by the Southern through interchange of traffic with the debtor. He repeated the fears entertained by the Southern that the acquisition by the Coast Line of the debtor's property would result in the stifling of competition among the trunk lines at Jacksonville.

As an illustration, of the power of a railroad to disrupt an established route in order to preserve its own long haul, notwithstanding the route was available in the tariffs, he testified that the Coast Line and the Southern had formerly maintained a joint route through Jesup, Ga., via Atlanta, for perishables originating on the Coast Line (other than its Lakeland division) and destined for Cincinnati, and that subsequent to the acquisition by the Coast Line of the Atlantic, Birmingham and Coast Railway, with a line between Waycross and Atlanta, the Coast Line so arranged its schedule at Jesup that it failed to make the necessary connection with the Southern's train for Cincinnati at Jesup and that as a result the interchange had practically "dried up," alleging that this was due to the Coast Line's insistence that it obtain the benefits of the haul from Jacksonville to Atlanta on the traffic formerly interchanged at Jesup.

The witness for Southern Railway introduced into the record a letter from the vice president of the Coast Line to the witness in which it is stated that Coast Line "had no intention of participating in any schedule via Jacksonville or Jesup to Cincinnati, or points beyond, which will provide better service via those junctions than via Atlanta."

The reference is to "better service." Coast Line, as the originating road, could not be expected to accord better service via its short-haul junction than via its long-haul junction, and it is natural that Coast Line should decline to discriminate in favor of Southern's long-haul route and against Coast Line's own long-haul route.

On the other hand, the vice president in charge of operations of the Coast Line, testified that it was the Southern and not the Coast Line

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which was responsible for the break. He testified that the Southern advanced the departure of the train in question from Atlanta so as to preclude the Coast Line from meeting it. He also testified that up to the time when the Southern declined to accept traffic from the Coast Line on the Southern train involved at Atlanta, the Coast Line had been making delivery at Jesup for the Southern train involved between 9 p. m. and midnight. He further testified that, although the specified closing hour was 10:30 p. m. many of the Coast Line's deliveries of perishables were made after 10:30 p. m., on account of operating difficulties; and that following the customary practices the Southern held its train at Jesup to protect such traffic, but that after having broken the connections at Atlanta, the Southern insisted on strict adherence to the 10:30 p. m. closing or delivery hour for perishables at Jesup. He also testified that after the break, the Coast Line still delivered perishables to the Southern at Jesup when routed "Southern Railway" at that junction.

The Southern and the Seaboard ask that we find, among other things, (1) that the Coast Line plan would result in diversion of substantial traffic to Coast Line which the debtor now interchanges with these two carriers with resulting deprivation to them of the large revenues which they now derive from traffic so interchanged, and (2) that the Coast Line plan would substantially impair competition between Seaboard, Coast Line, and Southern for traffic originated on or destined to points on the debtor's line, which is now interchanged by those carriers with the debtor.

On the basis of the record we cannot make the requested definite findings. Each of these carriers is greatly concerned with Florida traffic and, like other competing railroads, is alert to protect its long haul. As stated in our report of April 8, 1947, *supra*, and on the basis of the entire record we are unable to find that the effect of a merger of the debtor's property with the Coast Line upon the revenues of the Southern and the Seaboard, if any, would be adverse to the public interest.

In *Clinchfield Ry. Lease*, 99 I. C. C. 113, decided June 3, 1924, we authorized the lease by Coast Line and Louisville and Nashville jointly of the properties of Carolina, Clinchfield & Ohio Railway and its subsidiary, Carolina, Clinchfield & Ohio of South Carolina, and, in connection therewith, imposed certain conditions intended to preserve equal opportunity for use of those properties as a connecting route by railroads competitive with Coast Line and Louisville and Nashville.

It has been alleged more than once on this record that Coast Line deliberately sought to violate those conditions and was restrained from doing so only by the Supreme Court of the United States. A review

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of the case reveals that Coast Line was guilty only of a misinterpretation of the language of our conditions.

At the time the Clinchfield lease was authorized (1924) Georgia & Florida Railroad did not extend north of Augusta, Ga., but some years later constructed an extension (over which operation commenced June 1, 1929) to Greenwood, S. C., at which point the extension connected with Piedmont & Northern Railway, which in turn connected with Clinchfield at Spartanburg, S. C. Coast Line and its affiliates sought to restrict joint rates so as not to apply over the then newly constructed extension. The Georgia & Florida and the Piedmont & Northern protested, and we directed that the restrictions be canceled as in violation of the conditions of the Clinchfield lease.

Coast Line disagreed, maintaining that the Clinchfield lease conditions applied only to carriers at time of the lease directly connecting with Clinchfield (which the Georgia & Florida did not) and to routes existing at the time of our approval of the lease (the Greenwood extension of the Georgia & Florida having been subsequently constructed). The issue reached the Supreme Court and the Supreme Court (284 U. S. 288) agreed with us. The question there was simply one of interpretation of our order, rather than an attempt to circumvent it.

Considering the entire record, we find that the merger of the debtor with the Coast Line would be compatible with the public interest, and that we should approve such a plan.

FAIRNESS AND EQUITABLENESS OF THE CONSIDERATION PROFFERED UNDER THE COAST LINE PLAN

The cash and securities proposed to be paid, issued, or assumed by the Coast Line under its proposed modified plan, subject to certain conditions, are: $5,314,086 equipment obligations, $13,500,000 first-mortgage 3¾-percent bonds, $9,000,000 income 4¼-percent bonds, $9,000,000 preferred stock, $6,000,000 common stock (60,000 shares stated at $100 per share), and $4,842,186 cash.

The Coast Line takes the position that if the debtor's creditors are allotted cash and securities representing the equitable equivalent to what they would receive under an internal reorganization, subject to a proper division of the "value" which would be realized through savings in the event of a unification, they would be fully compensated for the rights and interests which they would surrender. It further maintains that the standard or yardstick to be used in measuring "equitable equivalence" is "real worth" and that "fair market value" is a sound measure of "real worth." In the latter connection, the Coast Line points out that there is a very important distinction between "fair market value" and mere current market quotations. "Fair mar-

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ket value" as the term is used by it, the Coast Line states, is "the price at which the security would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or to sell." In further explanation of its position in this respect, the Coast Line points out that in the case of securities of railroads which are to be operated and as a practical matter cannot be liquidated, the most important factor in determining real worth is the earning power of the issuer. Other important factors, according to the Coast Line, are the financial strength of the issuer, the place which an issue has in the issuer's security structure, the amount of the issue, and the differences in the attributes of the securities. The Coast Line maintains that the testimony of its witness Hahn hereinafter referred to was so framed as to elicit opinions which would reflect these factors, and cannot be properly characterized as speculative or unreliable. Finally, the Coast Line asserts that its package of cash and securities is the equitable equivalent of the rights and interests which the creditors of the debtor would surrender.

To demonstrate the fairness of the consideration proffered, the Coast Line points out that under witness Hahn's appraisal the aggregate market value of the securities which would be distributable under its plan amounts to $28,440,000 as compared to his appraisals of $23,100,000 [15] and $20,850,000 [16] of the securities which would be distributable under the St. Joe Company plan, and to his appraisals of $20,453,000 [15] and $18,428,000 [16] of the securities which would be distributable under the plan approved in our report of January 8, 1945, *supra*. These comparisons apparently are made on the theory that the securities which would be issued under the two latter plans represent the minima and maxima of what the debtor's first and refunding bond holders would receive under an internal reorganization of the debtor. In further support of the fairness of its offer, the Coast Line points out that witness McGinnis estimated that the market value of the securities which would be distributable under the Coast Line's plan would be $29,610,000, and that even Reuss (witness for the St. Joe Company), estimated that the market value of the securities which would be distributable under that plan would amount to $27,675,000, whereas he placed market values of only $25,000,000 to $26,250,000 on the securities which would be distributable under the St. Joe Company plan under a ratable distribution.

The interveners St. Joe Company, the trustees under the debtor's first and refunding mortgage, and the Lynch interests, dispute the Coast Line's position that the fairness and equity of its plan is to be measured largely, if not entirely, by a comparison of the estimated

[15] Based upon earnings of $2,500,000.
[16] Based upon earnings of $2,150,000.

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value of the securities which might be issued in an internal reorganization. They maintain that the Coast Line's contention in this respect is based on a distortion of the term "equitable equivalent" used by the courts with respect to adjustment of overlapping or common liens in internal reorganizations. These interveners assert that this is not such a case, and that the plan which the Coast Line proposes is in no true or real sense a "reorganization" in which the parties will participate in the ownership and control of the common debtor. They further assert that if the Coast Line is authorized to acquire the debtor's property under a plan of reorganization, it must pay full compensation for it. That compensation, they contend, is the fair value of the property itself and not speculative prices of hypothetical issues of unreorganized corporations.

These parties further assert that the fair value of the debtor's property is to be determined by (*a*) its past and prospective earning power, (*b*) the investment which it has made in its plant, (*c*) the rate-making value, (*d*) the value of its securities, and (*e*) the junk value of the property. Proper consideration of any one of these factors, they contend, shows that the fair value of the debtor's property is far in excess of the proffered consideration. Thus, the St. Joe Company maintains that the future annual earnings of the debtor cannot be justly considered as less than $2,500,000, and that this amount capitalized at 5 percent only would produce a value of $50,000,000. The St. Joe Company further asserts that the value of the debtor's property for rate-making purposes, upon the most restricted basis, is in excess of $75,000,000; that the value of the securities, whether present securities or the securities of a reorganized company, in both cases, are in excess of $50,000,000; and that the junk value on the site is at least $43,000,000. These values, the St. Joe Company points out, are without consideration of the cash in the hands of the debtor's trustees.

The Lynch interests assert that these factors amply support a valuation of $58,000,000, and that the latter amount is fully justified by Gordon's estimate of $2,850,000 of income available for fixed charges and Federal income taxes. They further assert that when consideration is given to the improvements made to the properties of the debtor during the period January 1, 1946, to March 31, 1950, at a cost of $19,105,165, the increase in value which they contend is justified over that found by us in our previous reports is shown to be conservative. While the trustees under the debtor's first and refunding mortgage do not ascribe a specific value to the debtor's properties, they assert that these factors, when proper consideration is given the proffered consideration of the Coast Line, is shown to be wholly inadequate.

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These parties, as well as certain of the other interveners opposing the Coast Line plan, also maintain that in evaluating the proffered consideration it is necessary to consider all of the conditions and provisions of the Coast Line plan which directly affect the proposal, namely, (1) the effective date (called "computation date"), (2) the cash reserves of $800,000 for reorganization expenses and $8,305,776 for future improvements and betterments, (3) the provision that the amount of cash payable to the first and refunding bond- holders in excess of the amount payable to them with respect to their first-mortgage bonds ($3,811,000) shall first be applied toward the discharge of any liens upon the property provided by court orders, and that the Coast Line first-mortgage bonds distributable to the first and refunding bond holders shall be reduced by the amount that such cash is insufficient to discharge such liens, and (4) the provision that the distribution to the holders of first and refunding bonds is subject to diminution by distribution to other holders of unsecured claims.

Inasmuch as any provision of the Coast Line plan which would have the effect of reducing or diminishing the cash which otherwise would be distributed to the debtor's creditors would have an important bearing upon the fairness of the total consideration, we will proceed to consider these questions before considering the other contentions of these interveners with respect to the reasonableness or justness of the proffered consideration.

Coast Line's proposed cash distribution.—The cash distribution of $4,842,186 proposed by the Coast Line plan is calculated on the following basis: A statement prepared by the debtor's trustees reflecting cash or its equivalent and quick liabilities involving payments of cash shows assets of $15,313,443 in excess of liabilities as of December 31, 1949. This amount together with materials and supplies of $3,520,005 and the tax carrybacks of $1,269,142 totals $20,102,590. The Coast Line plan provides for total cash reserves of $24,705,776, including a reserve of $12,000,000 for the payment of the principal amount of the debtor's first-mortgage bonds. This leaves a deficit balance in the estate of $4,603,186. Thus, to provide for the total cash requirements, it would be necessary for the Coast Line to advance $4,603,186 of its funds. Of the $12,000,000 reserved for the payment of the first-mortgage bonds, $3,811,000 would be paid to the first and refunding bond holders in respect of the first-mortgage bonds purchased by the debtor's trustees upon tender, and upon which the first and refunding bond holders have a lien through order of the court. In order to provide for the cash allotment of $90 per $1,000 of first and refunding bonds as proposed by the Coast Line plan, it would be necessary for the Coast Line to advance an additional $239,000 of its funds. This latter

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amount, together with the $4,603,186 necessary to overcome the indicated deficit, makes up the total of $4,842,186 of cash payable under the Coast Line plan.

The cash requirements of the previous plan were provided for in a reserve of $10,725,551 entitled improvements and betterments. Included therein was a reserve of $5,855,551 after deduction of depreciation accruals of $4,780,550, and $10,636,101 before deduction of depreciation. These betterments were made up of equipment purchases of $2,432,501; rail, $4,003,000; bridges, $600,000; stations and terminal facilities, $2,450,000; shop machinery, $187,500; and deferred maintenance $963,100. There was also included therein reserves of $1,170,000 for construction of the Fort Pierce cut-off, $600,000 for reorganization expenses, $500,000 for working capital, and $2,600,00 for material and supplies.

The reserve for improvement and betterments provided for in the Coast Line plan differs from that provided for in the previous plan in the following respects: Equipment maturities and cash payments on purchase of equipment are not taken into account since it is assumed that depreciation accruals will be adequate to provide therefor. The Fort Pierce cut-off having been completed no reserve is provided therefor. The reserve for reorganization expenses is increased from $600,000 to $800,000 and the reserve for cash working capital is $1,000,000, and these reserves are set up separately as well as the reserve of $2,600,000 for materials and supplies. Nothing is included in respect of shop machinery or deferred maintenance, inasmuch as it is believed to be unnecessary. The reserve of $2,450,000 for stations and terminal facilities is increased to $4,493,000, and the reserve of $600,000 for bridges is increased to $985,000. As of January 1, 1950, the aggregate net cost of completing the rail program contemplated by the reserve of $4,003,000 in the previous plan was estimated by the debtor's trustees at $2,827,776, and this latter amount is included in the reserve provided for in the Coast Line plan.

No questions are raised by the objectors to the Coast Line plan with respect to the reserves provided for reorganization expenses and materials and supplies. Questions relating to a reserve for completion of the rail program are moot under our conclusions herein with respect to the computation date, since no reserve will be necessary for that purpose. Questions relating to payment of the first mortgage bonds, the reserves for bridges, stations, and terminal facilities, and the allowances for working capital, are discussed later in this report under appropriate subjects.

Coast Line earnings.—The earnings of the Coast Line available for fixed charges and Federal income taxes (as reported, except adjustments to eliminate all items in respect of Federal income taxes) for

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the years 1947, 1948, and 1949 were $10,788,785, $13,815,314, and $14,990,076, respectively, averaging $13,198,057 per year. The results for the year 1946 were not included with these years because the Coast Line regarded those results too much affected by postwar adjustments.

In exhibits presented by the vice president in charge of accounts of the Coast Line, adjustments were made on account of the expenditures incurred by the Coast Line's rail relaying program. The entire cost in each year of the rail relaying program was not added to the reported income on the ground that it would be erroneous to assume that the Coast Line could never incur any further extraordinary charges in respect of a rail program.

Instead, there was developed a constructive normal annual charge of $3,257,438 [17] which would represent extraordinary expenditures each year over the period of the program with respect to the relaying of rail. The amount by which this constructive annual charge exceeded the average expenditures ($2,658,665) chargeable to operating expenses in the years 1947, 1948, and 1949 was then deducted from the reported average earnings for Federal income taxes and interest. This deduction for the years stated averaged $598,773, and the above-stated average of $13,198,057 of income so available for those years would be reduced to $12,599,285.

The development of this constructive normal annual charge contains several assumptions of more or less questionable accuracy. The Coast Line relies upon the results only as an approximation of its intended purpose.

The St. Joe Company criticizes both the method and the accuracy of the assumptions. Its witness, assistant chief engineer of the Southern Railway system, pointed out some of the complexities presented by any effort to calculate constructive annual normal average costs of a rail program, covering all the lines of railroad such as the Coast Line and spread, as to each part of the system, over the prospective life of the rail laid in that part. He stated that with respect to branch lines the Coast Line is similar to the Seaboard and the Southern systems, and introduced an exhibit showing from data contained in annual reports to us (1) that the average annual replacement of new rail by the Coast Line over the 29-year period from 1921 to 1949, was 157 track-miles, compared with 112 track-miles by the Seaboard

[17] This $3,257,438 was arrived at first by spreading the total expenditures for the complete rail relaying program ($26,009,920) over the number of years (30 as to 131 and 115 pound rail and 15 as to 100 pound rail), thereby obtaining an amount of $989,284. He then obtained a ratio of the number of equated track-miles covered by the rail relaying program for the period of the program to the number of all the Coast Line's equated track-miles, such ratio being 30.37. Then by dividing the above amount of $989,284 of annual amortization of the cost of the present rail program by 30.37 and multiplying the quotient by 100, he obtained the amount of $3,257,438 as the regular annual amortization of the cost of all the rail in the Coast Line's entire line.

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and 176 track-miles by the Southern over the same period; and (2) that the average annual relay rails laid in replacement by the Coast Line over the same period was 150 track-miles, compared with 107 by the Seaboard and 245 by the Southern.

He then applied the present day cost of relaying 131-, 115-, and 100-pound rails, less salvage, for the distances the Coast Line laid such rails in the period 1947–49 and computed the annual cost at $5,493,568, which he says corresponds to the constructive normal annual charge of $3,257,438 as computed by the Coast Line. Under his analysis the average earnings of $13,198,057 per year for the 3-year period 1947–49, as shown by the Coast Line, should be reduced by $2,834,903 instead of by $598,773, as shown by the Coast Line.

However, in the 3-year period 1947–49 the Coast Line actually put in its tracks an average of 206 miles of new rail, as compared with the average of 157 shown in St. Joe's witness' exhibit and 248 miles of relay rail, as compared with the average of 150 miles shown in the exhibit.

We believe that the Coast Line's conclusions as above stated may be taken as a reasonably close approximation of the adjustment as to the rail program which should be made in the 1947–49 results.

The Coast Line concedes that an additional downward adjustment of $43,078 with respect to interest received from the Peninsula & Occidental Steamship Company in 1947, 1948, and 1949 may be made in the average earnings for that period.

The earnings for Federal income taxes and fixed charges for 1950, as reported to us, were $24,650,194, and for the first 2 months of 1951, $4,136,159. Earnings for the same purposes in 1945 and 1946 were $9,388,459 and $6,014,792, respectively. The earnings available for fixed charges, after Federal income taxes, for the years 1941, 1942, 1943 and 1944 were, respectively, $17,553,141, $29,185,901, $23,386,930, and $21,608,678. In our third supplemental report, at page 340, the Coast Line's net income, after all charges, for the period 1928–45 is discussed, and the average results after certain adjustments are there shown.

In consideration of all the facts of record, we conclude that the annual prospective earnings of the Coast Line for Federal income taxes and interest are approximately $12,600,000.

Louisville and Nashville Railroad Co. dividends.—In our third supplemental report we pointed out that the Coast Line derived annually $2,880,000 in dividends on L. & N. stock owned by it, and we concluded that consideration of the sufficiency of the support for the new securities offered by the Coast Line should depend primarily upon the operating results of the Coast Line, since there was no assurance that such might not be sold in the future. In 1950, such dividends

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were $2,898,463. The Coast Line asks reconsideration of this conclusion, since the proceeds of such a sale would be retained by the company, used for purposes beneficial to the stockholders or distributed to them in cash.

Evidence as to value of securities.—At the recent hearings considerable evidence was received with respect to the market values of the securities which would be distributable under the Coast Line's plan, the St. Joe Company plan, and the plan approved in our report of January 8, 1945, *supra*.

Walter F. Hahn, of the brokerage firm of Smith Barney & Co., testified on behalf of the Coast Line. Hahn has been in the securities field for almost 30 years, and has specialized since 1923 in railroad securities. He was associated with Moody's Investors Service for 23 years. In making his studies, Hahn made the following assumptions: (1) That the plan under which the securities would be issuable had been consummated; that the securities had been issued and had a reasonable period of seasoning; (2) that the term "fair market value" meant "the price at which the property will change between a willing buyer and a willing seller, neither being under any compulsion to buy or sell," assuming an adequate supply of the security; (3) that the market conditions affecting the market prices were those prevailing on July 14, 1950; and (4) that the earnings of the issuer of the securities would be at certain specified levels. In the case of the Coast Line before unification he assumed a level of earnings of $12,600,000; for the debtor he assumed levels of earnings ranging from $1,879,000 to $2,850,000; and for the Coast Line after unification he assumed levels of earnings ranging from $15,929,000 to $16,900,000. Based on these assumptions, he placed a value of 93 on the Coast Line first-mortgage bonds, a value of 78 on its income bonds, a value of 68 on its preferred stock, a value of 45½ on its common stock, the latter figure being the closing price on the New York Exchange on July 14, 1950, for the Coast Line common. At these values, a total market value of $28,440,000 would be produced for the securities which would be distributable under the Coast Line plan. In making his studies Hahn took into consideration the yield which would be received on the assumed levels of earnings, the times fixed and contingent charges and preferred dividend requirements would be earned, and the earnings per share of common and preferred stock, and other factors customarily considered by market analysts. He also supported his conclusions with studies of market prices of other railroad securities which he considered comparable to those of the Coast Line.

Hahn also testified as to the fair market value of the securities which would be distributable under the St. Joe Company plan. Based on estimated earnings for the reorganized debtor of $2,150,00, he esti-

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mated a total market value of $20,850,000 for those proposed securities, pricing the first-mortage bonds at 83, and the common stock at 17. On an estimated level of earnings of $2,500,000, he priced the first-mortgage bonds at 88, and the common at 22, producing a total market value of $23,100,000. On the same levels of earnings, he estimated that the market value of the securities which would be distributable under the plan approved for the debtor in our report of January 8, 1945, *supra*, would amount to $18,428,000 and $20,453,000, respectively.

In addition to the evidence given by Hahn, the Coast Line presented evidence through its counsel with respect to the market value of its outstanding securities. The witness placed a total value of $156,598,798 on those securities. All equipment obligations were treated as worth their face amount, and the closing market prices on July 14, 1950, were assigned to the other outstanding Coast Line securities.

W. Wendell Reuss, a member since 1943 of the brokerage firm of McLaughlin, Reuss & Company, specializing in railroad securities, testified on behalf of the St. Joe Company with respect to the market value of the securities which would be distributable under the Coast Line plan and the St. Joe Company plan. Reuss has been in the securities business for many years, and was formerly employed by the Manufacturers Trust Company, Hirst, Lilenthal & Company, and Townsend, Graf & Co. In making his studies, Reuss also considered the factors of earnings, yield, the times fixed and contingent charges and preferred dividend requirements would be earned, and the earnings per share of common and preferred stock. His studies in this connection related to the results of operations of the debtor, Coast Line and Seaboard Air Line Company, and were limited to the post-war years 1946 to 1949, inclusive. Reuss placed a value of 93 on the Coast Line first-mortgage bonds, a value of 76½ on its income bonds, and a value of 55 each on its preferred and common stock. At these values a total market value of $27,675,000 would be produced for the securities that would be distributable under the Coast Line plan. With respect to the securities that would be distributable under the St. Joe Company plan, Reuss testified that the first-mortgage bonds would sell at par; and that, on the assumption that all of the bondholders of the debtor except the St. Joe Company would accept bonds, the new common stock also would sell at par. At this price the total market value of the securities would be $45,000,000. He further testified that, assuming a free market and an adequate demand and supply of the common stock, the common stock would be worth $20 or $25 per share. On that basis the total market value of the securities which would be distributable under the St. Joe Company plan would be from $25,000,000 to $26,250,000.

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F. Henry Van Ells also testified as a witness for the St. Joe Company with respect to the market value of the bonds which would be distributable under the St. Joe Company plan. Van Ells is now with the research department of Bache & Company, and has been in the securities business since 1942. Prior to that time he was with the Wall Street Journal, specializing in railroad matters and being its railroad editor. This witness testified that in his opinion the bonds would have a market value of par, which is the same conclusion as was reached by Reuss. In making his estimate, he assumed that the earnings of the reorganized debtor would be on a level comparable to that prevailing at the time of his testimony in July 1950. Van Ells further expressed the opinion that the price of the bonds would set the price of the stock for the reason that a bondholder would not convert his bonds into stock unless he believed he was getting the equal of the price of the bond or better.

Additional evidence with respect to the market value of the bonds which would be distributable under the St. Joe Company plan was presented on behalf of the trustees under the debtor's first and refunding mortgage through Patrick B. McGinnis. McGinnis is the senior partner of McGinnis & Company, specialists in railroad reorganization securities. He also is chairman of the board of directors of the Norfolk Southern Railway Company, and is the financial consultant of the New York, New Haven & Hartford Railroad Company. Based on his study of the earnings of the debtor, he testified that in his opinion the bonds which would be distributable under the St. Joe Company plan would sell at par after a seasoning period of 6 months. McGinnis also testified that he agreed generally with Hahn's appraisal of the securities which would be distributable under the Coast Line plan, except that he would use the price of 55 for the common stock, at which price the common closed on August 10, 1950, the day before McGinnis testified and would value the first-mortgage bonds at 95, the income bonds at 80, and the preferred stock at 70. At these prices, the total market value of the securities which would be distributable under the Coast Line plan would be $29,610,000.

Compensation of creditors of the debtor under the merger.—The Coast Line states on brief that the fundamental theory underlying its plan, is that the creditors of the debtor and the security holders of the Coast Line would both make contributions to a common enterprise, and that their interests in the common enterprise should be in proportion to their contribution. We hereinafter will discuss the merits of the application of this doctrine in detail. As to the theoretical merits of the proposal, the doctrine that the creditors must receive the equitable equivalent of the rights surrendered does not necessarily require that they receive such equivalent as to each element of value

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of their present rights. It is sufficient if total equivalence is afforded them. Otherwise many reorganizations approved and consummated under the Bankruptcy Act would have been impossible. *Ecker* v. *Western Pac. R. Corp.*, 318 U. S. 448. *Group of Institutional Investors* v. *Chicago, M., St. P. & P. R. Co.*, 318 U. S. 523.

The argument advanced by the St. Joe Company that this is not a reorganization to which such principles are applicable, because the Coast Line is a stranger to the proceeding and the parties would not participate in ownership and control of their common debtor, if accepted, would mean that such a merger as here contemplated would not be carried out under section 77. Such contentions were considered by us and overruled in our third and fourth supplemental reports in this proceeding and hereinbefore reaffirmed. Thus our problem here is to determine whether the Coast Line affords the creditors of the debtor adequate compensation for the rights surrendered.

The St. Joe Company contends that the taking of the debtor's property under the conditions of this case is in the nature of a confiscation proceeding in which the property is taken against the will of the owner and given to another at a price fixed by us and the court. It asserts that the value for rate-making purposes of the property exceeds $70,000,000, and that such value is the minimum which should be used for such purpose. It urges that distress values, such as evidenced by stock-market appraisals of a bankrupt company, or junk value, or valuation on basis of earnings during a period of rehabilitation and improvement and under court direction, are not fair indicia of the real value of its property.

But the arguments of counsel do not reflect a fair description of the basis for our conclusions herein. We have adjusted the earnings on the basis of comprehensive evidence as to the effect of the improvement program. No appreciable weight has been accorded the scrap value of the property, and earning power has been substituted for security values as the primary basis for our conclusions.

The fact, as urged by counsel, that in a rate case, the rate-making value would be the basis for determining whether or not there is confiscation, seems to us to be wholly foreign to the problem here confronting us. The primary question here is the valuation of the property for purposes of reorganization under the Bankruptcy Act, and the criterion of earning capacity has been held to be the essential one in bankruptcy proceedings. *Group of Institutional Investors* v. *Chicago, M., St. P. & P. R. Co.*, *supra*, (page 539). In that decision the Supreme Court clearly distinguished between the applicability of rate-making value in rate proceedings and earning power in reorganization proceedings under the Bankruptcy Act.

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The Lynch interests point out that in our third supplemental report we indicated that market prices constituted an unreliable and inconclusive basis for determining the adequacy of the compensation offered. The Coast Line contends that such conclusions did not refer to "fair market value" as used by it in support of its latest offer. As we understand the Coast Line's position and the evidence of its support, its witness has estimated the value of the securities from a consideration of the earning power of the properties and the attributes of the securities, in an attempt to eliminate variations in prices which, because of unusual market conditions at any time, may reflect deviations from the real worth of the securities.

While the evidence shows that the Coast Line approach to the problem eliminates, to some extent, the effect of variations in market prices from real worth based on earning power, the theory has defects which appear in our following discussion of the plan to be approved. We cannot accept the theory that "real worth" as computed by the application of market prices under the Coast Line method can be relied upon as the sole basis for determining the compensation which the creditors of the debtor should receive for the rights surrendered.

Furthermore, while a portion of Coast Line's traffic is subject to the same influences which would affect the debtor's traffic, Coast Line's traffic is more diversified. Therefore, there might be greater fluctuation in the earnings of an independently reorganized debtor than in over-all earnings of the merged enterprise. To take care of the contingency that, at times, the greater fluctuation in the earnings of the debtor might be upward, rather than downward, we required in our third supplemental report that the Coast Line preferred stock to be issued under the plan participate in common-stock dividends in excess of $4 per share. In order to meet the objection that the callability of such stock would eliminate the hoped for benefit, the Coast Line in its present proposal would make such stock convertible into common stock. The stockholder thus would lose his right to prior payment of $4 per share and accumulations of unpaid dividends up to $12 per share at any one time. At the price of 68 used by the Coast Line for the preferred stock, the price range of from 59 to 32½ for the Coast Line common stock in the years 1947 to June 6, 1950, does not justify the conclusion that the convertible feature suggested by the Coast Line adds materially to the value of the proposed issue of preferred stock. At the May 3, 1951 market closing price of 74⅝, the conversion right might add considerable to the value of the stock. It appears, however, that the conversion privilege affords little or no protection of the desired nature against a call of the preferred stock

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during a period of low earnings, and the consequent dilemma of the holders as to the course to pursue.

Under the circumstances and on the record before us, we conclude that the plan should provide the option of conversion on call only at 1¼ shares of common stock for each share of preferred stock. Other than on call, the conversion feature should be as provided in the Coast Line plan. We find that the plan should be modified accordingly.

The contentions of the various parties that the Coast Line plan does not offer enough in cash and value of securities, and that the plan is not as advantageous to the creditors of the debtor as the plan which the court sent back are moot, we think, in the light of the increases which we hereinafter have found to be necessary.

Our conclusions herein will reflect our consideration, among other things, of the past and prospective earning power of the debtor and the Coast Line; the debtor's investment in its plant, including improvements therein, the debtor's rate-making value as herein adjusted by us, and the value of its securities. These are the principal elements of value which the St. Joe Company contends that we should use as a basis for valuing the property.

In addition, the St. Joe Company and the Lynch interests contend that we should consider the salvage value of the property which is estimated on the record as $33,870,850 after deduction of the costs of recovery and transportation. But it previously has been held that net salvage value has no bearing on the amount of new securities to which bondholders are entitled. *In re Chicago, R. I. & P. Ry. Co.*, 50 Fed. Supp. 835, 862. For the reasons set forth in that decision we conclude similarly here.

Contentions of the Lynch interest that the Coast Line plan violates the absolute priority rule laid down in *Northern Pac. Ry. Co.* v. *Boyd*, 228 U. S. 482, because the crditors' lien claim for some $80,000,000 is unsatisfied, yet they are relegated to an inferior stockholder position in the Coast Line's capital structure, ignore the real basis for the proposals. The Coast Line has appraised the rights of the creditors in the debtor's property and endeavored to offer consideration of equal value for acquiring such rights. We hereinafter analyze the compensation from the standpoint of equitable equivalence. We do not agree that under our conclusions, as hereinafter stated, the absolute priority rule is violated.

The Coast Line requests that we make findings as to the "fair market values" of the securities which would be issued under (*a*) its proposed modified plan, (*b*) the St. Joe Company plan and (*c*) the alternative plan for internal reorganization which we would approve if the St. Joe Company had not submitted its plan. It requests that

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in making these findings, we (*a*) assume a stated level of railroad security prices as of a date near the time of issue of our report, and (*b*) predicate our findings on our own estimates of the prospective earnings of the unified enterprise, including therein our estimate of the amount of the savings from unification, and of the prospective earnings of the Florida East Coast as independently reorganized.

The Coast Line describes its theory of approach in determining the cash it would pay and the securities it would issue and assume under its plan as a test of whether the "real worth" which the debtor's security holders and the Coast Line, respectively, would have after consummation of the merger, has a proper relationship to their respective contributions to the earning power of the unified enterprise. Upon the assumption that we would find the prospective earnings of the debtor to be $2,150,000 and the prospective savings from the merger $1,450,000, it assumed there would thus be brought into the unified enterprise total earnings of $3,600,000 annually.

By reference to market quotations just prior to the 1950 hearings and taking the equipment obligations to be worth their face amounts, the Coast Line appraised the "real worth" of its outstanding securities as follows:

Equipment trust obligations	$22,521,000 at par	$22,521,000
Conditional-sale agreements	10,654,268 at par	10,654,268
First consolidated mortgage bonds	50,724,000 at 103	52,245,720
General unified mortgage bonds	32,650,000 at 102¾	33,547,875
Certificates of indebtedness	93,300 at par	93,300
Total interest obligations		$119,062,163
Shares stock	824,981 at 45½	37,536,635
Total		$156,598,798

Based upon testimony of record, hereinbefore reviewed, the Coast Line appraises the "real worth" of the securities it would assume and issue with respect to the acquisition of the debtor's property as follows:

Equipment obligation (as of January 1, 1950)	$5,314,086 at par	$5,314,086
First-mortgage bonds	13,500,000 at 93	12,555,000
Income bonds	9,000,000 at 78	7,020,000
Preferred stock	9,000,000 at 68	6,120,000
Common stock	6,000,000 at 45½	2,730,000
		$33,739,086

This appraisal, of course, does not include the $4,842,186 of cash. The sum of the two totals amounting to $190,337,884, the Coast Line treats as the "real worth" of all of the securities of the united enterprise.

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The Coast Line points out that by dividing the $190,337,884 by the combined assumed earnings of $16,200,000 for Federal income taxes and fixed charges ($2,150,000 for the debtor's property, $12,600,000 the Coast Line and $1,450,000 of assumed savings), the resulting quotient would show that the "real worth" of the securities would be 11.7492 times the prospective earnings. Multiplying the $3,600,000 of assumed earnings and savings which the debtor's properties would bring into the unified enterprise by the 11.7492 times-earnings ratio produces $42,297,120. This amount the Coast Line represents to be the "real worth" of securities which such earnings and savings would justify.

In addition to the appraised $33,739,086 of securities which the Coast Line would assume or issue with respect to the debtor's properties, the Coast Line would pay $4,842,186 of cash, which would in part be distributed to the debtor's security holders. The sum of these is $3,715,848 less than the $42,297,120 referred to in the preceding paragraph.

If the 11.7492 times-earnings ratio be applied separately to the assumed earnings from the debtor's properties ($2,150,000) and the assumed savings ($1,450,000), the resulting amounts would be $25,260,780 and $17,036,340, respectively. On the basis of the $38,581,272 of so-called "real worth" of assumed obligations, securities to be issued, and cash under the Coast Line plan, $25,260,780 would result from the assumed earnings and the remainder, $13,320,492, would result from the assumed savings, the last figure being approximately 78.2 percent of the $17,036,340 arrived at by applying the times-earned ratio to the assumed savings.

The Coast Line explains that it reflected in its plan the split of the savings from a merger on a 78.2–21.8 basis out of several considerations, principally: (1) From its belief that its estimate of the savings was conservative; (2) a justified liberality toward the debtor's security holders based upon the Coast Line's belief that the traffic relationship which it has had for many years with the debtor would be materially and adversely affected, to the Coast Line's injury as well as to the injury of the public interest, if there were an internal reorganization with St. Joe Company control; and (3) its belief that such proposal would be persuasive to the Commission and the court of the fairness of the plan.

It is clear that the accuracy of the conclusion drawn from this computation as to the adequacy of compensation for savings depends upon the adequacy of the compensation under the Coast Line plan, for the earnings of $2,300,000 which the debtor would bring into the unified company. Since our estimate of the debtor's normal year earnings exceeds somewhat the Coast Line estimates and our estimates of the

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savings from unification is lower than the Coast Lines, we cannot accept the Coast Line analysis.

Furthermore, in the situation which exists here, the primary problem is to compensate adequately the creditors of the debtor for the property which would be surrendered. Such compensation should not be limited necessarily to a share of the earnings of the Coast Line, represented by the relative earning power of the two properties. On the basis of our conclusions stated herein, the computed real worth of the securities and cash which would be paid by the Coast Line is not of controlling significance.

On the basis of the evidence, and our conclusions as to the present and prospective earnings of the debtor and of the unified enterprise, including savings which would result from the merger, we find that the fair market values, as of May 25, 1951, of the securities which would be issued under the Coast Line modified plan upon acquisition of the property of the debtor would be, for the first-mortgage bonds 96; the income bonds 80; the preferred stock 70 and the common stock 64. At these values, and taking the equipment obligations at par, the total real worth of the securities issued and assumed in the merger of the debtor computed by the Coast Line method under the Coast Line offer would be $35,614,086. Adding to this the total cash payment of $4,842,146 the total would be $40,456,272.

As of the same date, we find that the first-mortgage bonds issuable under the St. Joe Company plan would be worth par. On an earnings basis and on a free market the common stock would be worth $25 per share, and the bonds and stock together worth $26,250,000. Adding to this the equipment obligations, the total worth would be $31,564,000.

An exhibit presented by witness Hahn shows the earnings per share of stock under the St. Joe Company plan taking Federal income tax at 38 percent as $2.36 per share under the trustees' estimate; $3.04 by the Coast Line estimate, from $3.28 to $3.90 under Main's estimate and $4.77 under Gordon's estimate. The St. Joe Plan may not be an entirely orthodox basis for comparison since it is low in debt and has a large number of shares of stock.

A fairer test could be made by comparison with a plan which included both fixed and contingent interest bonds, thus permitting the issue of more debt securities. We believe that the debtor's normal year earnings would permit the issue of $13,500,000 of 4-percent fixed-interest bonds and $9,000,000 of 4½-percent contingent-interest bonds. The earnings coverage would be 3.47 and 2.15 times respectively before Federal income taxes and funds. Under a total capitalization of approximately $46,000,000 plus equipment obligations as hereinbefore approved for the debtor, there would be 235,000 shares of $100 par

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value stock on which the normal year earnings would be $2.88 per share after 45 percent Federal income taxes, excluding funds.

We hereinbefore have shown that the debtor's adjusted earnings in 1950 were $2,711,185 available for fixed charges and income taxes. On that basis the earnings per share of stock, assuming both fixed and income bonds as above, using 45 percent Federal income tax, and excluding funds, would be $3.84 per share. The debtor's earnings during the first 4 months of 1951 have been somewhat higher than for the same months of 1950. This fact and the forecasts presented by the parties justify the conclusion that for the next few years, its earnings may exceed somewhat those for 1950. If there were earnings of $6,000,000 as approached in 1944, the per share earnings would be $11.53. Considering the debtor's continual need for cash for improvements to the property, the per share earnings outlined above under various conditions appear to be reasonable.

We find that the theoretical capitalization for the debtor which should be used in part as a measure of the fairness of the Coast Line offer should consist of the equipment obligations, $13,500,000 of 4-percent fixed-interest first-mortgage 50-year bonds, $9,000,000 of 4½-percent, second-mortgage contingent-interest 75-year bonds and 235,000 shares of common stock. On the basis of witness Hahn's exhibits such first-mortgage bonds would be worth a little over $90, but considering the small issue and the testimony of other witnesses, we conclude and find that they would be worth par as of May 25, 1951. From the evidence we find that the second-mortgage income bonds would be worth $65 and the common stock at five times earnings, about $20 per share, as of the same date.

The total market value of these securities at these prices would be $24,050,000. Adding $5,314,000 for equipment obligations, the total would be $29,364,000. Under conditions as of the end of 1949 the bondholders would receive, after the reserves and allowances herein provided for, only $3,245,000 of cash in an internal reorganization, or somewhat less than the lien of first-mortgage bonds, redeemed and held in trust. Thus under a merger reflecting such reserves and the Coast Line proposed cash payment, they would receive $8,086,634, including the $3,811,000 representing the lien on first-mortgage bonds. Such cash would represent a clear cash gain of $4,841,634 over what they would receive under an internal reorganization, such gain being represented either by lien cash or by the Coast Line cash payment.

We are asked by the Coast Line to fix the value at which the property of the debtor would be sold by a willing seller to a willing buyer. Clearly the price at which a willing seller would dispose of the property would reflect his expectation of income or other benefits from con-

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tinued ownership of the property. Coast Line stock has not sold higher than 83¼ in the period covered by the record. The evidence shows that the St. Joe Company witnesses believe that under the St. Joe Company plan, there would not be any free market in the stock and that it would be worth, at least to the St. Joe Company, as much as the bonds. We do not believe that under these circumstances the issue to the creditors of the debtor of $42,342,186 of cash and principal or stated amount of Coast Line securities compensates them fully for surrendering property valued at $46,000,000, exclusive of equipment obligations, and for their share of the savings. If they are to receive a full return on the value surrendered under all conditions, there should be a reasonable relationship between the value of the property and the amount, as distinguished from present value, of securities received therefor. We are of the view that an allocation of securities based solely on real worth, as computed by the Coast Line, cannot be relied upon to give a just and reasonable result.

We are of the view that the value at which the debtor's property should be acquired by the Coast Line is approximately $46,000,000, exclusive of equipment obligations and that the creditors of the debtor should receive under the plan cash and principal or stated amount of Coast Line securities totalling at least that amount. Whether there should be additional securities issued in recognition of prospective savings remains for determination. The Coast Line is willing to allow the creditors of the debtor the major part of the savings which might be expected to result, retaining for itself only sufficient to justify the issue of the additional Coast Line obligations. It contends that its proffer of "real worth" in cash and new securities gives to these creditors a major part of the savings. The Lynch interests suggest that the normal year earnings of the debtor's property should be increased to reflect at least one-half of the prospective savings as estimated by the Coast Line, less Federal income taxes. It contends that the Coast Line offer clearly does not reflect capitalization of one-half of the savings at 5 percent and therefore does not adequately reflect the savings.

In our fourth supplemental report we refused to increase the estimate of future normal year earnings because of the prospective savings for the reason that the record did not justify such increase. From the record now before us, it appears that the savings averaging $925,000 may be expected in the near future. On the basis of the testimony of witness Gordon at an earlier hearing, we believe it fair to divide such prospective annual savings equally between the creditors of the debtor and the Coast Line, resulting in annual savings of $462,500 which in some manner should be reflected in the price paid by the Coast Line for the property. The Lynch interests suggest capitalization of the

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savings at 5 percent. Since the amount of the savings and the time of their future ultimate realization in full is open to some question, a 5-percent rate appears to be low.

We believe that the compensation which the creditors of the debtor should receive under the merger can best be established by determining the permissible capitalization in Coast Line securities of the debtor's earnings plus one-half the prospective savings together, a total normal year income of $2,762,500. The $14,000,000 principal amount of 3¾-percent divisional first-mortgage Coast Line bonds would permit the use of $500,000 of such bonds for the claims of unsecured creditors and the distribution of $300 principal amount of such bonds to each first and refunding bond holder. The total value of these bonds would be only slightly less, if any, than $13,500,000 of the debtor's bonds in a hypothetical reorganization and the difference would be more than made up by the issue of $13,500,000 of Coast Line 4¼-percent income bonds on which the earnings coverage would be higher than those of the debtor for the income bonds provided in the hypothetical plan of internal reorganization.

As the Coast Line proposes and as approved in our third supplemental report, there should be provision for $9,000,000 par value of $4 preferred stock. Determination of the amount of common stock which should be used in capitalizing the debtor's earnings and its share of the savings involves a consideration of the earnings of the Coast Line and the merged companies on such stock. The Coast Line earnings per share of its present common stock, using our normal year estimate, would be $6.40 per share if the L. & N. dividends are included, and $3.30 per share if they are excluded. The addition of 100,000 shares of common stock to the securities described above would result in total capitalization of $46,500,000, exclusive of equipment obligations, for the debtor and its share of the savings, and the earnings per share would be $4.86 which accords weight to earnings both with and without the L. & N. dividends and seems reasonable in the light of the earnings stated above. On the basis of $4,000,000 of Coast Line income bonds and stock which would develop normal year earnings of $4.86 per share, this represents a capitalization of the debtor's share of the savings at 6.3 percent.

We conclude that the value of the debtor's property in terms of Coast Line securities, including one-half of the prospective savings, is $46,500,000, plus outstanding equipment obligations. We find that the creditors of the debtor should receive for their property and their share of the savings, cash and Coast Line securities as outlined above totalling that amount. With a cash payment of $4,000,000, which would insure payment of the liens resulting from purchase of the first-

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mortgage bonds, there would be required $42,500,000 of securities, including 60,000 shares of common stock. In no event should the cash payment be reduced by court-imposed liens below $3,811,000.

Under a plan for merger providing for the issue of these securities, the merged properties in a normal year should earn their fixed charges 2.93 times before Federal income taxes and 2.32 times after such taxes. If the L. & N. dividends be excluded, these figures would be 2.39 and 1.82, respectively. Fixed and contingent charges should be earned 2.64 times before Federal income taxes and 2.09 times after. Excluding the L. & N. dividends, the figures would be 2.16 and 1.64 respectively.

Under such a plan, normal year earnings of the merged companies per share of common stock would be $7 after taxes. Excluding the L. & N. dividends, such earnings would be $3.89.

The Coast Line plan offered for each bond, income of $27.75 through preferred dividends and of $36.24, including common dividends and interest at 3.5 percent on the proposed $90 cash payment per bond. The income might have been less because of the necessity for providing for unsecured creditors. Under the hypothetical internal reorganization described above, earnings per first and refunding bond, assuming a $2 dividend on each share of common stock, would have been $31.44. Adding the income on the Coast Line securities issuable for one-half the savings, the total would be about $37.70. Under the merger plan as adjusted above deducting the income on securities for the unsecured creditors, the annual income of each first and refunding bond would be about $32.00 through preferred dividends and $37 through common dividends of $4 per share plus income on the cash received.

Under the adjusted merger plan, the total savings and the normal year debtor earnings would amount to $3,225,000. Of this amount, there would be paid to the creditors of the debtor $1,698,750, when dividends of $4 per share are paid on Coast Line common stock. There would remain $1,526,250 for taxes and for servicing the equipment obligations assumed, which should leave some residue of profit, in which creditors of the debtor, as stockholders of the merged companies, would have an equity. We conclude that from the standpoint of income to the creditors of the debtor and return to the Coast Line, the adjusted plan is fair and equitable.

As outlined above, the plan would provide for the issue by the Coast Line of $14,000,000 principal amount of 3¾-percent divisional first-mortgage bonds, $13,500,000 principal amount of 4¼-percent income bonds, $9,000,000 of $4 preferred stock, and $6,000,000 of common stock, with a cash payment of $4,000,000. We find that such plan would be just and reasonable.

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Such amounts of securities and cash compares with capitalizations previously approved in our prior reports, also proposals of Coast Line, as follows:

	Plan of initial report of April 6, 1942 (252 I. C. C. 482)	Plan of second supplemental report of January 8, 1945 (261 I. C. C. 171)	Plan proposed by Coast Line October, 1945 (267 I. C. C. 298)	Plan of third and fourth supplemental reports of April 8, 1947, and March 25, 1948 (267 I. C. C. 377)	Plan proposed by Coast Line August 1950 (Exhibit 434)	Plan herein approved
Securities of an internally reorganized company:						
First-mortgage 3¼-4-percent fixed-interest bonds	$12,000,000					
First-mortgage 4½-percent contingent-interest bonds		$20,280,000				
General-mortgage 4½-percent contingent-interest bonds	4,500,000					
Common stock, no-par, stated value	18,508,000	20,250,000				
Equipment obligations	1,992,000	666,000				
Securities of Atlantic Coast Line:						
Divisional first-mortgage 3½-percent fixed-interest bonds			$9,000,000	$13,500,000		
Divisional first-mortgage 3¼-percent fixed interest bonds					$13,500,000	$14,000,000
Divisional mortgage general income 4¼-percent contingent-interest bonds			11,250,000	7,875,000	9,000,000	13,500,000
Preferred stock, $4 dividend			9,000,000	9,000,000	9,000,000	9,000,000
Common stock, no-par, stated value			6,000,000	6,000,000	6,000,000	6,000,000
Equipment obligations assumed			2,829,177	2,829,177	5,314,086	5,314,086
Atlantic Coast Line cash			3,000,000	4,125,000	4,842,186	4,000,000
Grand total	37,500,000	41,166,000	41,079,177	43,329,177	47,656,262	51,814,086

NOTE.—First supplemental report of August 10, 1942, did not change the capitalization of the initial report of April 6, 1942.

[1] Possible cash distributable from debtor's treasury not included, because of indefiniteness at varying dates and consequent difficulty of comparing like with like.

The Lynch interests suggest that the Coast Line plan should include $6,500,000, principal amount additional of fixed interests bonds and $3,000,000 additional of income bonds. On this basis, the cash and securities would total $51,842,186 exclusive of equipment obligations, and the annual return to the bondholders would be $41.33 through commond dividends of $4 per share, and if a return of 3½ percent be included on the bondholders' cash gain the total return would be $44.64. The value fixed by us for the property, the probable income under an internal reorganization, and the prospective savings from the merger do not justify the issue of securities of the amount and nature suggested.

On the basis of the evidence, we conclude and find that as of May 25, 1951, the $13,500,000 of income bonds should be valued at 80. We find also that the participating preferred stock would be worth $70, and the common stock would be worth $64 per share. Using the values of other securities in accordance with our findings above, the total worth of all the securities to be assumed and issued plus cash of

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$4,000,000 would be $43,694,086 as compared with the value of $40,456,272 hereinbefore determined by us cash to be paid and securities issued and assumed under the Coast Line offer.

The debt securities issued against the debtor's properties, including savings, would constitute 69.5 percent of the total securities but only 63.3 percent of the total compensation. While the coverage of fixed charges of the unified enterprise of 2.93 is less than the coverage of fixed charges, 3.47 under the hypothetical plan for internal reorganization, it is more than the 2.7 times coverage of the Coast Line alone. The earnings of the unified companies will be more stable than under the internal plan. Coverage of fixed and contingent charges under the two arrangements are 2.64 times for the merged companies against 2.2 times under the internal plan. Even if the L. & N. dividends are deducted, the coverage of the unified companies is 2.16 times fixed and contingent charges. Considering the expected savings in operating costs, we conclude the effect of the merger will be to improve the debt charge coverage of the two companies.

Since the bondholders' liens for improvements must be paid out of the Coast Line's purchase price, it does not appear that they are reflected in the purchase price unless they are reflected in the value found for the property. In general, it appears that our higher valuation of the property herein reflects the improvements which had been completed at the end of 1950, and the equipment which had been acquired prior to the hearing in July 1950. This would exclude the five Diesel locomotives and four mail cars which at that time had not been authorized. These facts at least form a basis for elimination or diminution by the court of the liens established prior to 1951.

From the record, and for the reasons set out above, we conclude that the Coast Line plan would not fully compensate the debtor's creditors for surrendering their property rights, and that the plan should be modified as herein set forth. Before discussing these modifications certain other aspects of the plan will be discussed.

Income tax status of the various plans.—Evidence was presented at the hearings by a witness for the St. Joe Company of advice by tax consultants that the St. Joe Company plan would constitute a tax-free reorganization under the Bureau of Internal Revenue rulings and court decisions. The witness was not a tax expert. A well-qualified lawyer and tax expert testified for the same company that in his opinion under the Coast Line plan, the creditors of the debtor would receive capital gains which would not be exempted from taxation under the Internal Revenue Act. He doubted that the transaction could be considered a "statutory merger" under Florida law which would be a requirement for exemption under section 112 (b) (3) of the Internal Revenue Act, as provided in section 112 (g) (1) of that

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act. He further pointed out that since only about 36 percent of the compensation which the creditors would receive would be stock, he doubted that the exemption provided in section 112 (b) (5) of the act would apply because of lack of continuity of sufficient equity interest.

It appears that there are as yet no court decisions which could be considered as controlling in the tax situation here under consideration. Clearly, it is not our province to decide this question. Furthermore, the Coast Line argues on brief that the provisions of the St. Joe Company plan for election by the bondholders to take other than a ratable distribution of securities might remove that plan from the tax-exempt class.

The Conn plan is favored by its sponsor because it is believed to be clearly tax exempt. The mortgage trustee and the Welbon group consider the possible imposition of taxes a disadvantage under the Coast Line plan.

As pointed out by the Coast Line on brief, the record does not contain any cost bases for determining the effect of the provisions of the Internal Revenue Act under the various plans. We do not believe that we should be influenced by the possible tax status in considering the individual merits of the various plans. We conclude that we cannot accord any weight to the possible tax status of the several plans.

OTHER DETAILS OF COAST LINE PLAN

Effective date.—The Coast Line plan does not provide for an effective date as that term is usually used by us, but provides that the distributable assets be computed as of January 1, 1950, the securities to be dated as of any subsequent date, but the creditors to receive from the Coast Line the same amounts of cash and the same rights in respect of accruals and accumulations of interest or dividends as if the securities had been dated January 1, 1950. Although the specified date is not insisted on by the Coast Line, it prefers this approach to the problem because of the uncertainties connected with calculation and distribution of earnings realized between January 1, 1950, and consummation date, and the problem of calculating and providing for the assumption of the cost of improvements during such period.

The Lynch interests contend that the Coast Line proposal would cause the bondholders to surrender to the Coast Line, possibly high earnings over the period between January 1, 1950, and consummation date. They take the position that the bondholders should receive the benefit and risk the losses, if any, during such period.

It is obvious that the amount of the payments to be made by the Coast Line during the period in question would to some extent depend on the declaration and payment of dividends by the Coast Line.

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While failure to pay such dividends might reflect a recession in earnings which likewise would be reflected in lower earnings by the debtor, we favor avoidance of the dependency referred to in this situation. The Coast Line asserts that the present creditors of the debtor would profit by high earnings more than the Coast Line stockholders, because of the former's share in the Coast Line equity, but in our opinion this does not solve the problem of giving the creditors the benefit of the earnings of their own company. Expenditures for improvements subsequent to 1950 complicate the problem somewhat but we believe the difficulty can be surmounted by the provisions hereinafter made.

We conclude that as proposed by the Lynch interests, the plan should provide that the computation date should be the January 1 or July 1 next preceding consummation of the plan.

P. & O. Dock & Hialeah tracks.—The record shows that the debtor owns a 31-acre P. & O. Dock track in Miami appraised by a witness at $2,648,975, the use of which for carrier purposes is not clear on the record. It appears that there are long term tenants on some of the property, and the debtor uses some of it for access to a terminal on the water front. There also is a 640-acre tract located near Hialeah appraised by a witness at $384,000, as to the use of which the record is silent.

The Lynch interests contend that these tracts are not necessary for the operation of the railroad and should be sold, and the proceeds distributed to the bondholders. The Coast Line points out, among other things, that the rentals from the P. & O. Dock tract constitute income included in the earnings used to estimate the value of the propery.

The record does not permit a finding on these contentions. We believe that the bondholders should be permitted to realize on any portion of either of these tracts which are not needed for carrier purposes and do not return a reasonable income on their value. The plan which we approve will provide that in connection with consummation of the plan, the reorganization managers shall determine, subject to the approval of the court, what portions, if any, of these two tracts can be advantageously disposed of and the proceeds distributed to the bondholders and such disposition shall be made.

Provision for special liens in favor of the debtor's first and refunding mortgage bond holders.—Section IX (A) of the Coast Line plan contains the provisions with respect to the treatment of any liens which the court may have provided for or may later provide for as a result of expenditures of the debtor's cash for improvements to the property. In order that this rather complicated provision of the Coast Line plan may be clear, we quote in full:

If the properties of the Debtor be transferred to the Atlantic Coast Line Railroad Company, pursuant to Section II hereof, subject to any lien or liens pursuant to any of the Court's Orders contained in Documents Nos. 588, 595, 662, 703, 705, 707, 765, and 791, or subject to any other lien or liens of the Debtor's First and Refunding Mortgage or of the holders of the bonds issued under such mortgage, an amount of the cash to be turned over by the Atlantic Coast Line Railroad Company as provided in Section IX not exceeding the amount of cash distributable under the Plan to the holders of such Bonds (exclusive of the $3,811,000 distributable to them in respect of the purchased First Mortgage Bonds) shall be applied towards the discharge of such lien or liens.

If after such application of such cash any such lien or liens shall not have been fully discharged, the remaining amount of such lien or liens shall not be disturbed, and the amount of the Atlantic Coast Line Railroad Company Divisional First Mortgage 3¾% 25-Year Bonds to be turned over by Atlantic Coast Line Railroad Company for distribution pursuant to this Plan, as provided in Section IX, shall be reduced by the remaining amount of such lien or liens (subject to any adjustment the Court may determine to be proper with respect to interest accruals). The Atlantic Coast Line Railroad Company may nevertheless issue, and shall be entitled to have the Trustee of the Divisional First Mortgage authenticate, Divisional First Mortgage Bonds in the full amount specified in Section IX, and may retain any of such Bonds not turned over for distribution pursuant to this Plan. The Atlantic Coast Line Railroad Company may dispose of such retained Bonds, at such time or times and in such manner as it may see fit, provided that the proceeds of any sale or other disposition thereof shall be applied to the discharge of such lien or liens, or to reimburse the treasury of the Atlantic Coast Line Railroad Company for payments made by it, in addition to the cash payment provided for in Section IX, to discharge such lien or liens.

In imposing these liens, the court said in its memorandum opinion of June 29, 1950, in part, as follows:

The Court is still of the opinion that the First & Refunding bondholders are equitably entitled to the continued security of the liens created by said orders. These funds were pledged to said bondholders to secure the payment of bond interest long in arrears and still unpaid. Notwithstanding that pledge, the funds were diverted, not to ordinary maintenance or operation, but to pay for additional equipment, additions and betterments which enhanced the value of the railway property and which were regarded as necessary to enable the Railroad to successfully compete with other transportation companies. To the extent that the value of the property is thus enhanced these bondholders are entitled to reimbursement just as if this money had been borrowed from a third party for the purpose stated, the Court reserving jurisdiction to redetermine the amount of said liens, if equitable considerations so require, at the time this reorganization becomes effective. To secure this reimbursement, the bondholders are entitled to a lien superior to any interest acquired by new parties who receive the benefits of these extraordinary additions and betterments through reorganization.

* * * * * * *

Under 11 U. S. C. A. 205 (b) (1), the Interstate Commerce Commission has broad powers as to the issuance of new securities to replace existing securities. If the Commission desires to submit a plan which offers these creditors, instead of these specific liens, a just and equitable equivalent thereof,—a fair and adequate quid pro quo,—the Court will of course consider it. Certainly such

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a course would be no affront to the Court, as some of the parties seem to apprehend. The Court's sole concern would be whether or not the subsequent reimbursement or securities offered by the plan are in all respects, in the hands of said creditors, a just and equitable equivalent of the securities afforded by the existing liens, so that the creditors would be in equally as good position with the new securities as they are with the present liens. This question would be tested, not alone by a consideration of whether or not the obligation of the debtor is as great under the new securities, but also whether or not the position of the creditors would be as favorable with the new securities as it is with the existing liens.

An exhibit presented by the trustees of the debtor show that liens have been imposed by the court for expenditures for projects representing a total cost of approximately $9,294,550. As of March 1, 1950, charges on these projects totaled $9,366,794. If outstanding equipment obligations be deducted, the actual cash outlay would amount to $5,109,563, including operating expense cash and materials and supplies. Deducting the latter items, the cash outlay would be $4,619,005. The totals have changed since the hearing, but the foregoing totals are adequate for an understanding of the problem.

It is clear that the above-quoted provision of the Coast Line plan contemplates settlement of such liens in cash out of the price offered for the property. Settlement in cash would comply with the court's requirement that the creditors' position be as favorable with the new securities as with the existing liens. Thus the primary question here is as to the propriety of compensating the liens out of the purchase price. The Lynch interests contend that under the offer, the bondholders' position would be less favorable.

The fact that the value herein found for the debtor's property exceeds the value previously found by us, in itself does not conclusively establish that our value reflects the expenditures for which liens have been imposed. But the background of our new estimate of value affords convincing evidence of the extent to which such expenditures are reflected. The earnings reflect the savings resulting from new equipment acquired between March 1945 and July 1950. The trustee testified that his forecasts reflected improvements up to approximately the latter date. We conclude that our valuation reflects fully the value of these equipment acquisitions.

The Coast Line plan provides for no reserve for equipment, and we have approved such omission on the theory that depreciation accruals will offset such costs. Thus although additional payments will be made from time to time on the equipment they will be made largely from funds provided through charges to operating expenses. Under the provisions herein approved by us for the computation date under the plan, the creditors of the debtor will receive the income from operations up to consummation date after deduction of the depreciation

charges. The Coast Line will assume the payments after that date. Since the value of the equipment is reflected in our valuation of the property, we conclude that the Coast Line may properly deduct from the purchase price any sums used in payment of liens on account of the purchase of equipment covered by the court orders referred to in the plan. As subsequent purchases of equipment are not clearly reflected in our values, any resulting liens imposed by the court should be paid in cash, in such amounts as may be finally determined by the court, as an addition to the purchase price.

As to the other facilities added under court authority and the general additions and betterments, some of the expenditures were for facilities for shippers. These and the general additions and betterments are of a nature required of the debtor in order that it may continue to compete for traffic. The record does not disclose whether they resulted in definite traffic increases. If so, such traffic was reflected in the trustee's estimates. Under these circumstances we find that the Coast Line's proposed payment of those liens out of the purchase price is proper. If in the light of our decision herein, the court finds that liens should be imposed for expenditures of this nature under authorizations subsequent to those referred to in the plan, they should be paid in cash by the Coast Line, in such amounts as may be finally determined by the court as an addition to the purchase price.

The plan which we approve will so provide.

Cash reserve funds.—In our third supplemental report of April 8, 1947, we provided in the plan for merger there approved for a cash reserve upon consummation of not less than $10,725,551 on the basis of the computations there shown, to complete a rehabilitation program there described. Such reserve included $2,432,501 for equipment maturities and cash payments on equipment and $1,170,000 for construction of the Fort Pierce cut-off which now has been completed; $600,000 for reorganization expenses, $2,600,000 for materials and supplies, $500,000 for working capital, and $8,203,600 for various other items. The total cash reserve represented a net figure after deduction of $4,780,550 for depreciation accruals during the period.

The St. Joe Company plan makes no provision for a reserve fund, the argument being presented that the excess of depreciation accruals over the cost of ordinary additions, and the provisions of the new first mortgage for the issue of additional bonds for additions and betterments would be adequate to provide funds for needed improvements to the property. The plan, however, provides for $3,500,000 of working capital to be paid out of cash assets of the debtor to offset the lack of any other reserve fund.

The successor trustee suggests, on the basis of the testimony of its witness, that cash amounting to $800,000 be reserved for reorganiza-

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tion expenses and that working capital of approximately $3,500,000 be provided, without limitation as to use.

The Lynch interests on brief propose a cash reserve of $800,000 for reorganization expenses and $1,000,000 for cash working capital. However, they do not concede that the $1,000,000 should be allowed for working capital in case of a merger of the debtor's property with the Coast Line, as will be hereinafter discussed.

The Coast Line in its plan proposes a cash reserve of not less than $5,478,000 for bridges and stations, $800,000 for reorganization expenses, and $1,000,000 for working capital. On the assumption that the effective date (computation date) would be January 1, 1950, it also provided for a reserve of $2,827,776 for the completion of the rail program in 1950.

It is our view that the cash belonging to the debtor's creditors should be taken for rehabilitation of the property only when it appears that the contemplated improvements are required by the public interest and except for the intervening bankruptcy should have been constructed during the bankruptcy period and should be immediately undertaken, or where they clearly are included in the valuation of the property reflected in the issue of securities. In the record before us it appears that the earnings estimates of the trustees reflect the savings from Diesel equipment previously purchased, but not earnings from equipment the purchase of which had not been authorized at the time of the hearing, nor from the purchase of industrial land sites, or the bridge construction program. The passenger-station program would have little effect upon earnings, and we believe it would be difficult to determine that the increased earnings from the proposed improvements in freight stations and facilities have been reflected in the estimates. It is clear that the debtor's investment account and estimates of elements of rate making value which are before us do not reflect the proposed improvements.

The trustees presented a statement showing estimated expenditures of $19,247,334 chargeable to capital account which they believed the debtor should make in the near future. Of these, $775,391 represented estimated costs of completing a rail program in 1950. Since this program may now be assumed to have been completed, no cash need be reserved for this purpose. Other expenditures include $300,000 for land for industrial sites at Miami, $6,718,287 for maturities of obligations for equipment previously purchased, $972,500 for proposed equipment purchases which had not been authorized at the time of the hearing, $985,000 for bridges, and $9,496,156 for stations and terminal facilities.

Eliminating from this statement all charges for stations and the rail program and adding for 3 years the average of $454,025 per year

for normal additions and betterments shown by the trustees' exhibits, the total capital expenditure for the period 1951 to 1953, inclusive, would be $5,050,273. For the same years, depreciation accruals are shown as $4,170,583. The difference to be made up out of earnings thus would amount to $879,690 or $293,230 per year. Thus expenditures for stations and freight facilities would have to be financed out of earnings.

It appears that for possibly 10 years in the future the debtor's depreciation accruals should exceed normal additions and betterments by approximately $850,000. While the programmed payments for 1951 to 1953, inclusive, will average $1,042,733, they will be reduced to $878,000 in 1953, and we conclude that no provision need be made in the plan for an equipment reserve.

The $300,000 included in the trustees' figures above for industrial sites at Miami represents a long range expansion project, desirable and possibly necessary, for traffic development but it does not appear from the record that it is immediately necessary. We conclude that this item should not be provided for in the reserve.

The Coast Line proposes setting aside in the cash reserve the entire estimated cost of $985,000 for bridges, and the successor trustee and the Lynch interests would not include any sum in the reserve for the bridges.

It appears that the New River bridge, for which $600,000 is included in the trustee's program has been strengthened, and there is no immediate need of expenditures on this bridge in the interests of safety, although doubtless its replacement eventually will have to be programmed. Conversion of the bridges at Hillsboro, North New River, and Miami canals at a cost of $385,000 to draw or lift type can await determination of the necessity for such action in the light of changes which may be made in the drainage control of the Everglades district. One of the trustees testified that he was hopeful that the change could be avoided. We do not believe that the costs of any of these bridge projects is sufficiently large, or the immediate necessity of the work is such as to require their inclusion in the reserve fund.

The trustees' estimate of costs of stations and terminal facilities include $5,549,156 for 13 passenger stations, $297,000 for freight stations and facilities at Fort Pierce and Fort Lauderdale, and $3,650,000 for freight terminal facilities at Miami. The costs of passenger stations include $4,353,156 for a new station at Miami.

It appears from the evidence that, during the bankruptcy proceedings, there has been constantly recurring demands from growing communities on the line for better passenger-station facilities. Those demands have been put off on the grounds that such improvements should await completion of the reorganization. Recently the pressure has

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revived, and in 1949 the Florida Railroad and Public Utilities Commission, after hearing, ordered the trustees to relocate and improve the passenger facilities at Miami. The trustees' request for instructions on this order is still pending before the court. At the present time pressure is being brought for new stations at Fort Lauderdale and West Palm Beach, the two largest cities on the line north of Miami.

Some idea of the problem involved can be obtained by noting that our third supplemental report in these proceedings provided for only $2,450,000 of cash reserve for stations and terminals. The extended period of the bankruptcy, during which improvements in station facilities have been kept at a minimum, has had the effect of deferring action on an ever increasing number of requests for new facilities. Increases in the prices of materials and labor during the same period have greatly increased the costs of improvements. The record is clear that, immediately upon reorganization, the company will be faced with the problem of financing some station and terminal improvements. One of the trustees testified that various methods of financing had been considered but that the only method now available was out of cash now on hand.

We cannot say, until the details of the changes in the Miami facilities are presented to us, as they have not been so presented in this proceeding, whether or not it is a matter which requires our approval under the Interstate Commerce Act, and we cannot approve any specific plan for relocation of the facilities until it is presented to us through an appropriate application. Our conclusions herein as to the establishment of a reserve fund for such facilities are not to be construed as an indication of the conclusions we may reach in our consideration of any such application.

In our third supplemental report we recognized the urgency of the situation at Miami by providing a reserve fund for at least part of the costs of a new passenger station. Now, however, the total of capital expenditures estimated by the trustees has increased to the figures stated above, and include the costs of rearrangement of freight facilities. The successor trustee under the refunding mortgage presented witness McGinnis who thought it was asking too much of the creditors of the debtor to pay for the station out of earnings, and favored financing through local interests and leasing of the facilities necessary for railroad use by the reorganized company. He thought that no funds should be reserved for the stations or terminal facilities.[1] The Lynch interests likewise contend that no reserve should be set aside for these items.

The Coast Line in its merger plan proposes setting aside $4,493,000 in the reserve for stations, representing $1,196,000 for passenger sta-

tions other than Miami, $3,000,000 for the Miami station, and $297,000, the estimated costs for the Fort Pierce and Fort Lauderdale freight stations.

Clearly a new Miami passenger station is the most urgent of the various projects. Owing to the pressing necessity for a new station at this point, the demand for which has been increasing all through the bankruptcy period, and the attitude of the State and local authorities in the matter, we believe that there should be set aside out of current cash an amount sufficient to make a substantial contribution to such a project. We consider the $4,353,156 included in the trustees' program for this station far above what we should include in a reserve fund. Even the $3,000,000 for that purpose scheduled by the Coast Line is in excess of what we should approve.

The trustee who testified concerning the $3,650,000 for improvements in the freight facilities at Miami scheduled in the trustees' statement, stated that in his opinion all of the tracks contemplated in this program would not be needed immediately. The record justifies the conclusion that the proposed changes would improve the operating efficiency at that point and that at least part of the expenditures could be spread over a number of years in the future. We are of the view, however, that the creditors should not be required to contribute part of past earnings for this improvement, and no sum should be included in the cash reserve for that purpose.

The need for new freight stations at Fort Pierce and Fort Lauderdale has been pressing for some time, and it appears that these improvements should be made as soon as possible to improve the company's earning power. We conclude from the evidence that the debtor's earnings have been such that, except for intervening bankruptcy, these improvements should have been constructed during recent years, and that $297,000 should be included for them in the reserve fund.

The estimated costs of the 12 other passenger stations amount to $1,196,000. We conclude from the evidence that approximately $200,000 might reasonably have been expended on such stations during the bankruptcy period and should be set aside in a reserve fund under the plan for stations. We conclude that the fund should include $500,000 for passenger and freight stations and facilities without specific designation as to the location of the stations for which it should be used.

We find that there should be set aside out of the debtor's cash, upon consummation of the plan herein approved, $2,500,000 for the Miami passenger station, $500,000 for other passenger and freight stations and facilities, and $800,000 for reorganization expenses, with provi-

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sion that any portion of the last item not used for such purposes shall be paid to the bondholders.

Materials and supplies of the debtor as of December 31, 1948, amounted to $3,769,663, as of December 31, 1949, to $3,520,005, and as of March 31, 1950, to $3,189,057. There appears to be no opposition to the sum of $2,600,000 as an allowance for materials and supplies. Upon the record we approve such an allowance as part of the plan.

As stated, the Lynch interests oppose any allowance of working capital in case of approval of a merger with the Coast Line. They take the position that a provision for the allowance of such a fund out of cash would in effect be an enforced gift to the Coast Line; and that to do so would not be fair and equitable, and would amount to depriving the bondholders of their property without due process of law. Provision for the setting aside of $1,000,000 as working capital is part of the Coast Line's proposal. A fund for that purpose is a primary requisite for running a railroad, just as materials and supplies are requisites. In this instance the debtor's trustees gave $1,000,000 as their estimate of the needs of the railroad for working capital. No opposition to the amount as such was made. Our conclusions as to the probable earnings of both the debtor's properties and the proposed unified properties contemplated the existence of such a fund. The record does not disclose that the cash requirements for operating the property would be any less under a merger than under an internal reorganization. We see no reason for an allowance of such a fund in the case of an internal reorganization and the withholding of it in the case of a merger. Upon the record we approve an allowance of the sum of $1,000,000 as working capital as part of the plan.

Distribution of cash.—The Coast Line plan provides for distribution to the first and refunding bond holders of the balance of cash in the treasury of the debtor (subject to certain diminutions and possible diminutions relative to special liens and unsecured claims, hereinafter discussed) after payment of the obligations and the reserves and allowances as stated in our previous description of the plan.

We previously approved herein reserves and allowances totaling $7,400,000. To this amount should be added $12,000,000, for payment of the first-mortgage bonds, consisting of $8,189,000 outstanding and $3,811,000 which the debtor's trustees purchased under authority and order of court document 507 and upon which the court imposed an express trust for the pro rata benefit of the holders of the first and refunding bond holders; the total thus being $19,400,000.

In our third supplemental report we approved the "net current asset" method of determining the amount of cash distributable under the plan, and included with the assets the cash in account 704. We

adhere to our decision in that respect, the current asset accounts to include accounts 708 to 719, inclusive, and account 704 and the current liabilities accounts to include 758 to 768, inclusive, and accounts 770 and 778. The date of computation of the amount of the cash distribution will, under the plan, be the January 1 or July 1 next preceding consummation. Liability account 767, taxes accrued, may need adjustment at the time of computation on the matter of Federal income taxes. For example, as of December 31, 1949, that account includes a debit item of $2,581,686, representing claims filed for Federal income tax carry-backs. The most reasonable approach to the tax problem is to reflect in the computation of available cash the total tax liabilities without deduction of probable recovery under claims against the Government for taxes previously paid. Provision should be made for distribution of any recovery on claims for the period to date of computation.

We now come to a consideration of certain diminutions and possible diminutions that may be required from the cash distribution just analyzed. The amounts of the liens imposed by the court under its several orders hereinbefore set forth (documents 588, 595, 662, 703, 705, 707, 765, and 791) are at present undetermined. Obviously those amounts also will vary from time to time.

If the court decides that the holders of those liens shall continue to hold such liens in the light of our determinations herein set forth, such liens would also have to be satisfied. While the effect of this would be to reduce the cash, the first and refunding bond holders would receive from sources other than liens, the total cash received would remain the same.

If and to the extent that the remainder of the cash payable by the Coast Line, after payment therefrom of the $3,811,000 relative to the like principal amount of first-mortgage bonds held in trust for the benefit of the first and refunding bond holders, be insufficient to satisfy the liens established under the court's orders (documents 588, 595, 662, 703, 705, 707, 765, and 791, including any other similar liens established by the court prior to our hearings on July 11 to 14, 1950) and held by the court to be still in effect, then the provisions of the Coast Line plan for the withholding of sufficient of new fixed-interest bonds from delivery to the first and refunding bond holders, for the purpose of enabling the Coast Line to raise funds to satisfy any such liens, would apply.

Any additional liens imposed by the court for improvements not authorized at the time of the hearing before us will, as hereinafter provided, be covered by additional payments by the Coast Line.

Accordingly, the Coast Line plan should be modified to provide that the debtor's cash assets be determined by deducting from the total

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current assets of the debtor computed as of the computation date, including current asset accounts 708 to 719, inclusive, and account 704, the total of current liability accounts 758 to 768, inclusive, and accounts 770 and 778. To the adjusted net current assets so determined should be added the cash payable by the Coast Line under the plan herein approved and from the resulting amount should be deducted the $3,000,000 reserve for stations and facilities, the $2,600,000 reserve for materials and supplies, and the $1,000,000 allowance for working capital (a total of reserves and allowances of $6,600,000). The plan should provide for the following payments out of the balance remaining for the purposes and in the order shown:

(*a*) Of matured and unpaid obligations of the trustees, including all expenses of reorganization including the reserve of $800,000 for reorganization expenses, and unpaid expenses for the prior receivership proceeding approved by the court.

(*b*) Of claims entitled to priority over the debtor's mortgage bonds and not assumed by the reorganized company pursuant to the plan.

(*c*) Of principal of $8,189,000 and accrued and unpaid interest to date of payment of the debtor's first-mortgage 4½-percent bonds.

(*d*) Of the $3,811,000 of first-mortgage 4½-percent bonds which the debtor's trustees purchased under authority of court order in document 507 and upon which the court imposed an express trust for the pro rata benefit of the holders of the first and refunding bonds.

(*e*) Of any liens which the court may determine continue to exist, in the light of our determinations herein, arising out of court orders contained in documents 588, 595, 662, 703, 705, 707, 765, and 791, including any other similar liens established by the court prior to our hearings on July 11 to 14, 1950, provided that such liens shall not be paid out of such cash in an amount exceeding the amount by which the total cash paid by the Atlantic Coast Line Railroad Company exceeds the $3,811,000 required to pay the 4½-percent first-mortgage bonds held in trust for the benefit of the holders of the first and refunding bonds.

(*f*) Of amounts required to effectuate cash settlements of certain unsecured claims as provided herein.

(*g*) To the Coast Line of the amount of the foregoing payments not made by the trustees of $1,000,000 for working capital as described above and the sum of $3,000,000 as a reserve for stations and freight facilities as described above.

(*h*) Of the remainder pro rata to the holders of each maturity of matured and unpaid interest coupons of debtor's first and refunding bonds, beginning with the earliest maturity, with provision for payment later of any tax refunds received for the period prior to consummation.

Free assets; treatment of unsecured creditors.—Since the hearings in 1944, the court entered its order of March 23, 1949 and supplemental order of April 27, 1949 (documents 758 and 770) whereby it declared certain assets of the debtor free of liens. However, no values were placed upon these assets by the court and there is dispute among certain of the parties not only as to the proper valuations of the various items but also as to whether the cash proceeds of, and income derived from, such free assets (1) by the receivers during the former receivership proceedings and (2) by the trustees of the debtor during the present reorganization proceedings are subject to the claims of the unsecured creditors.

As to this latter question, it is conceded that all cash proceeds amounting to $23,324 and income amounting to $183,998, derived from such assets during the receivership proceeding have been commingled with the general funds of the debtor. The court held (court record document 770) that such funds totaling $207,322 were not subject to being traced by any creditor since the funds were used by the receivers to preserve and maintain the railroad and in any event any such right is now barred by laches. The question remains as to whether the same principle should apply to proceeds and income derived from the assets during the reorganization proceeding. Such proceeds amount to $230,787 and the income to $499,239, a total of $730,026. As to this matter the court did not specifically decide. This cash was not set aside by the trustees and no items of the trustees' cash entering into the total have been specifically identified on the record.

In *Missouri Pac. R. Co. Reorganization*, 257 I. C. C. 479, 494, involving a similar situation, we said:

> The record does not show what disposition was made of this cash by the trustees, i. e., whether used for capital expenditures or for ordinary expenses of the trust estate, and what part, if any, remains unexpended. Thus it is impossible to know whether, and to what extent, the reorganized company will benefit. Unsecured creditors do not have a lien on cash coming into the hands of the trustees of the debtors, at the time of the institution of the bankruptcy proceedings or subsequent thereto, whether comprising repayments of, or dividends or interest on unpledged bonds and notes, or otherwise, and such cash is available for use by the trustees for any proper purpose in the administration and operation of the trust estate without accountability to the unsecured creditors. See *In re The Chicago, R. I. & P. Ry. Co.*, 50 Fed. Supp. 835.

It is our opinion and we find that none of the cash in the present proceeding so realized by the trustees from the items of free assets during the reorganization is subject to the claims of the unsecured creditors.

As to the disputed values of the assets declared by the court to be free of mortgage liens, it appears from the briefs that the disagree-

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ment among the parties is with respect to three items, which, with the different claims as to value, are as follows:

	Coast Line estimate	Successor trustee, first and refunding mortgage
1. Fruit Growers Express Co. stock	$459,250	$296,000
2. Peninsular & Occidental Steamship Company bonds	562,200	417,218
3. Jacksonville Terminal Co., advance	7,500	0
Total	$1,028,950	713,218

The president and directors of The Manhattan Company and J. Bryson Aird, successor trustees of the debtor's first and refunding mortgage, have included in their briefs a thorough discussion and analysis of these disputed values and the basis upon which they were determined. The debtor owns 2,960 shares of the Fruit Growers Express Company stock, being the debtor's proportionate investment in the company, which is solely owned by various railroads using its service. The stock is not otherwise sold and has no market value. The mortgage trustees point out that the Coast Line value of $155 per share is based solely on book value, whereas their own valuation of $100 per share is based on a consideration of the earnings of the company from 1932 through 1949, the average amounting only to $3.65 per share. In the opinion of these mortgage trustees, such earnings, even though the company's services have a special value to the debtor, cannot conceivably justify a value greater than par. The stock is carried on the books of the debtor's trustees at $118,600, which is about $40 per share.

The Coast Line valued the $937,000, principal amount, of Peninsular & Occidental Steamship Company 4-percent bonds, owned by the debtor, at $600 per bond, as compared with a value estimated by the debtor's trustees of $445 per bond. The mortgage trustees adopt this latter valuation as being the more reasonable since the sales value of the steamship *Florida*, which is now the sole security for the total of $3,644,000 of bonds outstanding, is not more than $1,500,000 or about $412 per bond. A witness for the Coast Line testified at the hearings that he believed that the chance of continued payment of interest on the bonds is remote.

The Coast Line appraises the debtor's advance of $7,500 to the Jacksonville Terminal Company at face amount. As the mortgage trustees state in their brief, the debtor's trustees assign no book value to this advance on the theory that it will never be repaid.

The items of free assets which the mortgage trustees state are of a total "agreed" value of $464,138, constitute all the remaining "free

assets" as determined by the court. In general, these are the values as estimated by the debtor's trustees or based on the record as made before a special master appointed by the court.

For the purpose of this proceeding we conclude and find that a total value of $1,177,356 for all the assets heretofore declared free by the court is fair and reasonable.

There are three kinds of unsecured claims against these free assets. These are as follows:

1 Coast Line—upon assignment by Flagler Estate and Florida East Coast Ferry Company of open account indebtedness of the debtor	$1,900,000.00
2. Tort and other small creditors	148,488.71
3. First and refunding bond-holders—on claim purchased from New York Trust Company and held by the mortgage trustees	487,418.32
	2,535,907.03

Nothing is included in the foregoing for any claim which the first and refunding bond holders may have for any deficiency resulting from an excess of the amount of their claim against the debtor over the value of their security.

The principal of the bondholders' claim amounts to $45,000,000 and, additionally, about $35,000,000 of interest is in default. Although controverted (without citation of authority) by some of the parties, it appears to be settled as a matter of law, as stated by counsel for the first and refunding mortgage trustees that upon reorganization of the debtor, mortgage creditors share in free assets for any deficiency in satisfaction of their claim for the principal of their debt but not for unpaid interest thereon.[13]

The unsecured claim of these bondholders in the amount of $487,418, arose by assignment to their mortgage trustees of a claim in that amount against the debtor by the trustee of the disaffirmed equipment-trust "D." Settlement of this claim was effected by negotiation between the first and refunding mortgage trustees and the equipment trustee and was adopted by stipulation filed December 13, 1949 (document 804) signed by these two parties and by the trustee of the debtor's first mortgage, the Coast Line, the Lynch interests, St. Joe Company, F. K. Conn, and E. N. Claughton. By the terms of the stipulation the equipment-trust trustee was paid $120,000 cash for assignment of its claim of $487,418 against the debtor, and it was further stipulated that the claims of the tort and other small general creditors, referred to above, should be settled on a similar basis, and that such claims

[13] *Group of Institutional Investors* v. *Chicago, M., St. P. & P. R. Co.*, 318 U. S. 523, 573. Also see *Ticonic National Bank* v. *Sprague*, 303 U. S. 406, cited therein.

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when and if finally allowed by the court should be purchased by the debtor's trustees at 24.64 cents on the dollar, subject to the acceptance of such a settlement by the holders of such claims.

By further order of the court, entered on the same day (document 805) the court authorized and directed the debtor's trustees to purchase the equipment-trust claim for $120,000 cash and to transfer the claim so purchased to the trustees under the first and refunding mortgage who should thereby succeed to all the right, title and interest to the claim.

If each of the classes of unsecured creditors as listed in the tabulation above should participate ratably in the value of the free assets, each would be entitled to 46.4274 percent [19] of the total of its claim, since that is the ratio of the total value which we have found for the free assets, to the total unsecured claims. Thus, $882,121 would accrue to the Cost Line, $68,939 to the tort and small creditors and $226,296 to the first and refunding mortgage bond holders.

Certain of the parties contend that the Coast Line should not participate. We believe that is a matter which, as provided in the Coast Line plan, should be left to the court.

We have hereinbefore described the items of free assets, the value of which we have found to constitute $713,218 of the total of $1,177,356. The Fruit Growers Express Company stock has no market value and as stated, its average annual earnings over a long period of years has been only $3.65 per share. The Peninsular & Occidental bonds are secured only by one steamship at the present time, and the record indicates that there is serious doubt whether interest on the bonds will be continued. The remainder of the free assets consists of real estate parcels valued at $43,296, a Peninsular & Occidental note $83,911, some U. S. Sugar Corporation common stock and a small amount of Railway Express Agency stock, and the balance comprises advances to Railway Express Agency Co., and Atlantic and East Coast Terminal Co.

In our third supplemental report, we discussed in some detail, the value of the steamship company bonds, the Fruit Growers Express Company stock, and Railway Express Company advances, holding that if any of those assets were found by the court to be free of the liens of the mortgages, the free assets as a whole were entitled to allocations of one-half first-mortgage bonds and one-half stock. While the present record indicates some deterioration in the value of the assets mentioned above, we believe it justifies allocation of part first-mortgage bonds to them. We conclude and find that the free assets

[19] The percentage figure of $46.5274 stated in the successor trustees' brief corrected to 46.4274.

valued above at $1,177,356 should be allotted 50 percent in new first-mortgage bonds and 50 percent in common stock under an internal reorganization.

However, as to the tort and small creditors, whose claims are of large number and of small individual amounts, a distribution of new securities is impracticable. Settlement of many of these claims and others is possible on the basis of the stipulation referred to above as provided in the Coast Line plan. Other unsecured claims may be approved by the court prior to consummation. Under these circumstances we conclude that as provided in the Coast Line plan, determination of amounts of the unsecured claims, including any deficiency claim of the successor trustees of the first and refunding mortgage and the subordination of any claims should be decided by the court. It is apparent that a distribution of securities to the large number of tort and small claim creditors who may elect to take securities instead of the cash settlement would require, in many instances, allotments of small fractions of bonds or shares of stock. The same situation may result from the necessity of distributing securities to the possibly large number of creditors who have no right of election to take cash instead of securities. The plan should provide, therefore, that in connection with the distribution of new securities to the unsecured creditors, where the new bonds so distributable to a single creditor or for any portion of the claim of a single creditor would be less than $100, face value, or the stock would be less than one share, the total of all the securities which otherwise would be so distributed in such fractional lots shall be delivered to the reorganization managers to be sold by them at either private or public sale and the cash proceeds distributed pro rata on the basis of the securities which each would have received. Securities representing the share in the free assets of creditors electing to receive cash under the stipulation referred to should be delivered to the reorganization managers for distribution to the refunding bond holders.

In view of the possibility that the first and refunding bond holders may participate with the other unsecured creditors with respect to some part of their claim for unpaid interest, thus greatly reducing the amount of securities available for distribution for each $100 of claim, we find that the provision of the Coast Line plan which would permit settlement of the Coast Line unsecured claim, in the absence of objection, on the basis of $24.64 on each dollar should be eliminated.

Under the hypothetical internal reorganization there would be set aside bonds at their principal amount for 50 percent of the value of the unmortgaged assets and common stock at $100 per share for the balance of such value. Under the plan herein approved, the bondholders would receive common stock of the Coast Line which on an

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earnings basis, share for share, amounts to about 60 percent of the stock which would be allotted in an internal reorganization. Thus, under the merger plan there should be allocated to the free assets Coast Line divisional fixed-interest bonds equal in principal amount to 50 percent of the value found for the free assets and for the remainder of such value, Coast Line common stock of an amount in stated value of such stock equal to 60 percent of one-half the value of the free assets.

On the basis of the foregoing, the court should determine the participation of the unsecured creditors under the plan. The plan should be modified accordingly.

Considering the entire record we conclude and find that the modified plan of the Coast Line for merger of the property of the debtor with the Coast Line, as herein modified by us, will afford the creditors of the debtor the equitable equivalent of their existing rights in the property of the debtor.

PROVISIONS OF THE PLAN APPROVED

We conclude that we should approve the modified Coast Line plan with the changes hereinbefore indicated and summarized below.

Computation date.—The date as of which the cash distributable to the creditors shall be determined should be the January 1, or July 1, whichever is nearer, next preceding the date of consummation of the plan.

Cash reserves.—Section VI of the plan should be modified to provide reserve of $3,000,000 for improvements to the debtor's property, such reserves to be used for the purposes hereinbefore set forth. The change specified above in the computation date necessitates elimination of the provision of the Coast Line plan for deduction of extraordinary expenditures for improvements between the computation and consummation date.

The provision under which the Coast Line could, unless otherwise directed by the court, retain any excess of the reserve of $800,000 for reorganization expenses over the sums paid, should be eliminated. The plan should specifically provide for the distribution of any excess to the creditors.

Cash distribution.—Section VII of the plan should provide that the adjusted net current assets should be computed in connection with determination of the cash distribution, as of the computation date. Possible tax carry-backs should be omitted in determining such net assets, and provision be made for distribution of any recovery on claims for taxes for the period to date of computation. The change in the computation date herein approved will require elimination from the plan of specific provision for the amount of cash the creditors are to receive.

Cash payable and new securities issuable by the Coast Line.—The provision of section IX of the plan for payment by the Coast Line of cash and securities for the debtor's property should be changed to require the turning over to the debtor's reorganization managers cash in the amount of $4,000,000 instead of $4,842,186, such payment in no event to be reduced by court-imposed lien charges to less than $3,811,000; $14,000,000 instead of $13,500,000 principal amount of Coast Line divisional first-mortgage fixed-interest 3¾-percent 25-year bonds, and $13,500,000 instead of $9,000,000 principal amount of Coast Line income divisional mortgage 4¼-percent 75-year bonds.

Provision should be made that the new securities may be dated on or as of any date subsequent to the computation date, which the court may approve, provided that the recipient of the security shall be entitled to receive the same amount or amounts of cash and the same rights in respect of accruals and accumulations of interest or dividends as if such security had been dated as of the computation date.

Provision should be made for payment by the Coast Line of additional cash in the amount of any liens established by the court for cash belonging to the creditors of the debtor, used for purchase of equipment not authorized on the date of our hearing in July 1950, and for other improvements authorized for years subsequent to 1950.

The provision of the plan for deduction from cash payable by the Coast Line of payments to the refunding bond holders or unsecured creditors prior to consummation should be eliminated because of the change herein required in the computation date.

Allowance of liens for improvmeents.—This section IX A of the plan should be modified as may be necessary to reflect the modifications of section IX to reflect Coast Line payments required by additional improvement liens imposed.

Additional provision.—Section II of the Coast Line plan should be modified to provide that the reorganization managers shall determine what portions, if any, of the Hialeah tract and the P. & O. Dock tract are not needed for carrier purposes and can be advantageously disposed of, with the approval of the court, and the proceeds distributed to the bondholders.

Preferred stock.—Section XI (A) of the Coast Line plan should be modified to provide for conversion of the preferred stock into common stock, if called for redemption at 1¼ shares of common stock for each share of preferred stock. Otherwise, the conversion privilege should be on a share for share basis as provided in the Coast Line plan.

Common stock.—Section XII of the Coast Line plan should be modified, in view of our revision of the provisions as to computation date, so as to provide that if the computation date shall be prior to the date as of which holders of such common stock will receive pay-

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ment of a dividend on the common stock previously declared, a cash adjustment shall be made to the holders of the common stock allocable in this reorganization.

Provision should be made for reservation of 22,500 additional shares of common stock for conversion of preferred stock to implement the modification hereinbefore approved by us in the conversion rate upon call of the preferred stock.

Determination and application of available net income.—Section XIII of the plan relating to this subject should be modified so as to reflect the provision herein approved as to the computation date. Paragraph (d) of the section prescribing the purposes of which available net income may be used should be modified to provide for payments into the divisional mortgage sinking fund to the extent of the difference, if any, between the amounts paid in prior years and the amounts which would have been payable if the available net income in prior years had sufficed for payments of $67,500.

Treatment of existing securities and claims.—Section XIV of the Coast Line plan should be modified to conform to our conclusions herein stated with respect to the previous sections of the plan and the unsecured creditors.

Upon consummation of the plan, or prior thereto if the court should so order, holders of the debtor's outstanding first-mortgage 4½-percent bonds, due June 1, 1959, would receive for each $1,000, principal amount of bonds held, cash in the full principal amount plus all accrued and unpaid interest to date of payment of the principal.

Holders of the debtor's first and refunding mortgage 5-percent bonds, series A, would receive for each $1,000, principal amount, of bonds held, and all accrued and unpaid interest to the computation date of the plan, subject to reduction on account of unpaid court-imposed liens, $300 principal amount of Coast Line divisional first-mortgage fixed-interest 3¾-percent 25-year bonds; $300 principal amount of Coast Line general income divisional mortgage 4¼-percent 75-year bonds; $200 par value of Coast Line participating cumulative convertible $100 par-value 4-percent dividend preferred stock; approximately 1⅓ share of Coast Line no-par-value (stated value per share $100) common stock; and a cash payment representing his share of the net excess of current assets held by the trustee over current liabilities as of the computation date after adding a Coast Line cash payment of $4,000,000 and after deduction of the reserves and allowances provided for in the plan. The minimum cash payment would be $84.69 per $1,000 bond. The amount of first-mortgage bonds and common stock distributable to the holder of each bond might vary slightly, depending on the method of settlement approved by the court for the unsecured creditors, the cash available for distribution and the

amount of liens imposed by the court upon cash used for improvements to the property.

The unsecured creditors are allotted New Coast Line first-mortgage bonds of a principal amount equal to 50 percent of the value of the free assets, the remainder of the claims to be allotted Coast Line common stock of a stated amount equal to 60 percent of the portion of the value of the free assets to be satisfied in stock. Provision is made for the sale and distribution of the proceeds of securities representing distributions or portions of distributions of less than $100 principal amount or one share.

Undisturbed securities.—The Coast Line shall assume all outstanding equipment obligations of the debtor and of the debtor's trustee. We find that as so treated, the interests of the holders of claims evidenced by all such equipment obligations will not be materially and adversely affected by the plan.

Claims not affected by the plan.—The following claims to the extent allowed are not affected by the plan: (*a*) Claims arising from the administration of the trust estate and operation of the property subsequent to the filing of the petition under section 77 of the Bankruptcy Act, as amended, on January 25, 1941; (*b*) obligations of the receivers incurred in the receivership proceeding between the time of appointment of the receivers on August 31, 1931, and the filing on January 25, 1941, of the petition under section 77 of the Bankruptcy Act, as amended, and reasonable administrative expenses, and allowances in that proceeding, to the extent that provisions shall be made therefor by the court in the present proceedings; (*c*) claims entitled to priority over one or more of the mortgages of the debtor, including labor claims entitled to such priority; (*d*) claims for taxes and special assessment; (*e*) claims for interest and principal, provision for the payment of which has been made by the debtor or by the court, but which have not been paid because not presented for payment. To the extent that such claims, liabilities, or obligations are not paid by the debtor or the trustees of the estate of the debtor pursuant to order of the court in the reorganization proceeding, they shall be assumed by the Coast Line and paid in cash in due course, provided that any amounts of the foregoing classes (*a*) to (*e*), inclusive, assumed by the Coast Line shall constitute a charge upon the property securing the new divisional mortgages, such charges to be prior to such new divisional mortgages. All such claims, liabilities, and obligations may be adjusted or compromised and dealt with or paid or discharged by the Coast Line, all as may be determined by its board of directors. In view of the above-stated provisions, the interests of the holders of such claims of the foregoing classes (*a*) to (*e*), inclusive, against the debtor will not be materially and adversely affected by the plan.

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Treatment of the debtor's $3,811,000 first-mortgage bonds held in trust.—The $3,811,000 of the debtor's 4½-percent first-mortgage bonds purchased by the debtor's trustees under authority of court order contained in document 507 and held in trust by the successor trustees under the first and refunding mortgage shall be paid in cash at the consummation of the plan or earlier if so ordered by the court. When so paid the interests of the holders of these bonds are held not to be materially and adversely affected by the plan.

Treatment of the assumption of certain leases and contracts.—The Coast Line plan provides that the Coast Line shall assume such of the contracts of the debtor which are executory in whole or in part, including any executory leases and liabilities under guaranties as shall have been affirmed by the trustees of the estate of the debtor in the reorganization proceeding with the approval of the court, and also any executory contracts made by the trustees of the estate of the debtor with the approval of the court in the reorganization proceeding which, by their terms, do not terminate at the conclusion of the reorganization proceeding. When such contracts are assumed by the Coast Line, the interests of the other parties to such contracts are held not to be materially and adversely affected by the plan.

Protection of employees.—For clarity, section III of the Coast Line plan should be modified to provide that the 4-year period of protection therein provided shall commence to run on the date that the property of the debtor is transferred to the Coast Line.

Other provisions of the plan.—Our approved plan will contain the usual provisions with respect to notice and construction of the plan, payment of taxes due the United States, and submission to us of journal entries covering the necessary accounting adjustments under our order approving the plan.

Treatment of stockholders of the debtor.—The equities of the holders of the debtor's capital stock are found to have no value and nothing shall be distributed to such holders in the reorganization.

REQUESTED FINDINGS

Findings requested by the St. Joe Company.—The St. Joe Company requests 21 findings of fact. Among these is a request that we find that the value of the free assets now held by the bankruptcy trustee does not exceed $1,200,000. We hereinbefore have found that the value of the assets heretofore found to be free is $1,177,355. St. Joe Company also asks us to find that the fair value of the assets subject to the first and refunding mortgage bonds and subject to equipment liens of $5,314,000 is substantially in excess of $50,000,000. We hereinbefore have found such value to be approximately $51,314,000.

The other requests for findings of fact are denied as not supported by the record, not material to the issues involved in the proceedings, or because they are moot in the light of our conclusions herein.

Declarations of law requested by St. Joe Company.—The St. Joe Company requests us to declare that a plan providing for a consideration to be paid by the Coast Line for mortgaged assets of the debtor, which is less than that of the plan condemned by the court, is unlawful per se. This request is denied for the reason that such declaration is unnecessary in the light of our conclusions herein.

Pursuant to the request of St. Joe Company, we declare that on the basis of the record the holders of the debtor's first and refunding mortgage bonds are, prior to reorganization of the debtor, equitable owners of the assets mortgaged to secure the bonds.

The request that we declare that the right of such bondholders as equitable owners of the mortgaged property to recoup the unpaid portion of their claim out of future earnings, is a property right of which they may not be deprived arbitrarily is denied since the materiality of the request would require the assumption that the theory and processes of the proceeding are arbitrary.

The requests for further declarations of law are denied because they ignore or are immaterial to the real issues in the proceeding or are moot in the light of or inconsistent with our conclusions herein.

Findings requested by Southern and Seaboard.—Southern and Seaboard request the following findings:

1. That the Commission is without statutory power to approve a plan of reorganization of the debtor, such as the Coast Line's plan, that would result in the merger or consolidation of the debtor's property with Coast Line, without the consent and over the objections of the holders of a large majority in amount of the debtor's first and refunding mortgage bonds, who are the equitable owners of the debtor's property.

2. That the Coast Line plan would result in diversion of substantial traffic to Coast Line which the debtor now interchanges with Southern, with resulting deprivation to Southern of the large revenues which it now derives from traffic so interchanged with the debtor.

3. That the Coast Line plan would substantially impair competition between Seaboard, Coast Line, and Southern for traffic originated on or destined to points on the debtor's line, which is now interchanged by those carriers with the debtor.

4. That the Coast Line plan would result in disruption of existing routes and channels of trade and commerce between points on the debtor's line and points north of Jacksonville.

5. That for the foregoing reasons the Coast Line plan is not compatible with the public interests

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From our consideration of the record and for the reasons set forth in this and previous reports in the proceedings we conclude that the request of the Southern and Seaboard for findings as stated above should be denied.

Summary of findings.—The principal findings upon which we have based our approval of the plan hereinabove set forth are summarized as follows:

1. Upon making the necessary findings as to the public interest involved in the future control of the debtor and as to satisfaction of the claims of the debtor's creditors, we have the power under section 77 of the Bankruptcy Act to approve a plan transferring the debtor's properties to the Coast Line.

2. It would not be compatible with the public interest for the St. Joe Company to control the debtor's property.

3. Control of the debtor's property by the St. Joe Company would be contrary to the public interest, since the St. Joe Company would be in a position, particularly because of its large banking interests, to influence shippers or receivers to route their shipments over any connecting carrier which, because of advantageous division arrangements, or for other reasons of its own, it may wish to favor and that such opportunity given to a private institution of admittedly widespread power presents a situation which might have grave consequences and against which it would be impossible adequately to protect the shipping public and the carriers with which the debtor's line connects.

4. The public interest in its broader concept will be better served by integration of the debtor into a large railroad system than by its continued operation as an independent railroad.

5. The interests of the railroad employees affected by the merger will be adequately protected.

6. The effect of a merger upon the Southern Railway system and Seaboard Air Line Railroad Company, if any, will not adversely affect the public interest.

7. There should eventually result savings through a unification of the two carriers of between $850,000 and $1,000,000 per annum, through (*a*) eventual unification of the executive and supervisory forces of the two carriers; (*b*) consolidation of interchange yards and shop facilities at Jacksonville; (*c*) unification of operations of the freight stations of the two carriers at Jacksonville; and (*d*) coordination and consolidation of off-line traffic offices of the two carriers.

8. There would be betterment of service to the public resulting from a unification of the debtor's line with that of the Coast Line.

9. The apprehensions of the citizens and communities of the east coast of Florida that a merger would adversely affect their interests

are not justified since (*a*) it would be to the interest of the Coast Line to serve all its territory impartially, (*b*) existing through routes via Jacksonville will be maintained, and (*c*) while the Coast Line would attempt to retain its long haul, its appeal to the public would be based primarily on the quality of its service, and the traffic relationships between trunk-line carriers would prevent any abuse of power such as would be possible under control of the debtor's line by the St. Joe Company.

10. The merger of the debtor with the Coast line will be of appreciable benefit in assuring greater financial stability for the debtor.

11. In general, there is a substantial preponderance of evidence that a merger will insure a more adequate, economical, and efficient transportation service than will operation of the debtor by the St. Joe Company.

12. The record is sufficient in all respects for a determination of the issue of the public interests involved in an acquisition of the debtor's properties by the Coast Line.

13. It will be compatible with the public interest for the Coast Line to control the debtor's property.

14. While the plan proposed by the Coast Line is inequitable in that it does not provide for the full equitable equivalent of the rights to be surrendered by the debtor's creditors, the plan as hereinabove modified will comply with such requirements, will be fair and equitable, and otherwise in the public interest.

CONCLUSIONS

All requested findings and requested provisions of a plan not specifically discussed in this report or upon which no specific decision is made herein have been given consideration, and we find that they are not justified to the extent such requested findings and provisions of a plan are not incorporated in the plan herein approved. Any failure herein by us to discuss any arguments advanced by parties in support of their contentions is not due to our failure to consider them in reaching our conclusions. In some cases they are in respect of matters decided by us on what we consider other proper and controlling grounds and in some cases they have been adequately treated in prior reports.

We conclude and find that the plan providing for the merger or consolidation of the properties of the debtor with those of the Coast Line, proposed and filed by the Coast Line, all as set forth hereinbefore, but as further herein specifically modified or amended, meets the requirements of subsection (b) of section 77 of the Bankruptcy Act, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of

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any class of creditors or stockholders, will conform to the requirements of the law of the land regarding participation of the various classes of creditors and stockholders, and will otherwise meet the requirements of subsection (e) of section 77, and will be compatible with the public interest.

The third supplemental order entered herein on April 8, 1947, approving a plan will be vacated.

Nothing contained in the plan as herein approved should be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's properties, or pooling of traffic pursuant to either the Bankruptcy Act or the Interstate Commerce Act, until further appropriate action by us upon confirmation of the plan by the court.

An appropriate supplemental order will be entered.[20]

MAHAFFIE, *Commissioner*, dissenting:

In my dissent from the fourth supplemental report in this proceeding, I stated in detail my reasons for believing that the plan approved for merger of the debtor with the Coast Line violated the principles laid down by the Supreme Court in *Northern Pac. Ry Co.* v. *Boyd*, 228 U. S. 482, requiring satisfaction in full of the claims of senior creditors before junior interests may be permitted to participate in the assets of a debtor in reorganization. I there pointed out that although under the plan approved the creditors received much less "in value than the face of their claims," they were required to give up their interest in the debtor, including the right to control the property and accept securities of the Coast Line also having a value much less than the value determined for the property. In view of the inconsistency of this process, and the results obtained, with the doctrine of the *Boyd* case, *supra*, I am unable to accept the resulting subordination of the principles laid down as the authoritative test of what is fair and equitable to the Commission's conclusions as to what is required by the public interest.

The Commission now requires the payment of a higher price in cash and securities by the Coast Line for acquisition of the debtor's property, on the basis of the evidence presented at further hearings of the improvements in the debtor's plant since the previous hearings and the improved earnings of the property since the previous plan was approved. Essentially, however, the process is the same as in the previous report. For the reasons which I have previously stated I do not agree with the conclusion that the plan now approved is fair and equitable.

[20] The plan of reorganization incorporated in the Commission's fifth supplemental order, as modified by its sixth supplemental order of October 25, 1951, appears on pages 213-226, *post*.

As a matter of fact the increase of some $6,000,000 in the purchase price found necessary at this time accentuates the inherent unfairness of the plan. Had the plan of 1947 been consummated such increase in value would have inured largely to the Coast Line security holders. This would have been the result of divesting the creditors of the debtor of their property on the basis of value derived from estimates of future normal year earnings. Estimates as now presented by the various parties vary by nearly 1 million dollars. Clearly no such inequitable result could occur under an internal reorganization in which the entire interest in the debtor's property would be turned over to its creditors. Yet it is impossible at this time, on the basis of the most recent estimates of future normal earnings of the debtor, to exclude the possibility, or even the probability of future further changes in the value of the debtor's property.

The properties of the debtor and the Coast Line are essentially different in that the traffic of the former is largely originated or terminated in the relatively small territory which it serves, while the latter receives traffic from a much larger number of connecting carriers and thus its financial condition may be expected to reflect the economic conditions more nearly national in scope. The report recognizes this distinction but argues that for this reason the debtor is at a disadvantage as compared with the Coast Line. Considering the evidence of the development in recent years of the Florida peninsula industrially and agriculturally, it is conceivable that the reverse situation might develop. Under the circumstances, I doubt if a plan which would be really fair to both the debtor and the Coast Line could be worked out satisfactorily from estimates at any one time of the future normal earnings.

I recognize that in view of the decision of the court of appeals in this case it is the "law of the case," described in *United States* v. *U. S. Smelting Co.*, 339 U. S. 186, 199, as "only a discretionary rule of practice" that the Commission has the power to approve such a merger as the approved plan now includes. The arguments presented have not convinced me that the Bankruptcy Act properly may be used to implement a transaction which is beyond the scope and powers of the Commission under the Interstate Commerce Act. It is more important, however, to note that while the court of appeals concludes that a plan providing for a forced merger might be lawfully certified by the Commission and approved and confirmed by the district court, it specifically pointed out that the case was remanded for the purpose of working out a really fair and equitable plan, without prejudice to consideration of any fair and equitable plan. It agreed with the district court that such a forced merger as was previously approved was contrary to the statute. The court of appeals emphasized, under the

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circumstances of opposition to the plan by 98 percent of the equitable owners of the debtor and other factors, the duty of the district court to subject the proceedings to the closest scrutiny to determine the effect of the plan upon the bondholders of the debtor and its fairness and equitableness particularly in the light of the doctrine of the *Boyd* case, *supra*. I find nothing in the decision of the court of appeals which affords any hope that the plan now approved may be found to conform to the established principles as to fairness and equitableness.

The trustee under the debtor's first and refunding bonds, the only bonds which would be seriously affected under the plan, all bondholders appearing before us, the employees of the debtor, and a great predominance of the representatives of shippers and other local interests who appeared, favor an internal reorganization. In general, these interests, as well as the other carriers serving the territory, oppose the plan for a merger. This is persuasive that the public interest will best be served by approval of a plan providing for an internal reorganization.

The evidence presented by shippers and by the Southern Railway and the Seaboard Air Line Railroad Company indicates that approval of this merger will disturb the existing competitive situation through operation of many of the factors influencing the routing policies of shippers, which were summarized by division 4 in its decision in *Central California Traction Co. Control*, 131 I. C. C. 125. In that case division 4 deemed it necessary to protect the interests of carriers competing for traffic in the territory, by permitting them to participate in the control of the company. No such protection is afforded the competing carriers in this case.

The proceeding has now been before us twice upon offers by the Coast Line to acquire the debtor's property. In my opinion neither offer, nor the plan now approved, complied with the legal requirements of a plan under the Bankruptcy Act. Approval of such a plan will, I believe, unnecessarily postpone the termination of this already protracted proceeding. I would approve a plan for internal reorganization, substantially the plan presented by the St. Joe Company.

I am authorized to state that CHAIRMAN SPLAWN and COMMISSIONER LEE join in this expression.

COMMISSIONER MITCHELL did not participate in the disposition of this proceeding.

U. S. GOVERNMENT PRINTING OFFICE: 1952

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INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

Submitted September 27, 1951. Decided October 25, 1951

Upon petitions, modified plan of reorganization of the Florida East Coast Railway Company, debtor, approved July 12, 1951, pursuant to section 77 of the Bankruptcy Act, as amended, further modified and approved.[1]

Appearances as shown in prior reports.

SIXTH SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

Within the statutory period of 60 days from the date of the Commission's report and order of July 12, 1951, 282 I. C. C. 81, approving a plan of reorganization for the Florida East Coast Railway Company, debtor, hereinafter called the approved plan, pursuant to section 77 of the Bankruptcy Act, as amended, 11 U. S. C. 205, petitions for reconsideration and/or modification of the plan were filed by the St. Joe Paper Company, Lynch interests, Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company, Southern Railway system, president and directors of the Manhattan Company and J. Bryson Aird, as successor trustees under the debtor's first and refunding mortgage, Florida Railroad and Public Utilities Commission, hereinafter called the Florida commission, F. K. Conn and others, W. G. Welbon and others, and Railway Labor Executives' Association and Brotherhood of Locomotive Firemen and Enginemen. Replies have been filed.

By the terms of section 77 (d) of the act, after rendering a report and order approving a plan of reorganization, we may upon petition for good cause shown, filed within 60 days of the date of our order, and upon further hearing if we shall deem necessary, in a supplemental report and order, modify the plan approved, stating the reasons for such modification.

In this report the abbreviations will be as in former reports in this proceeding. All requested findings and contentions not specifically

[1] Previous reports: 252 I. C. C. 423 and 731; 254 I. C. C. 865; 261 I. C. C. 151 and 860; 267 I. C. C. 295 and 729; and 282 I. C. C. 81.

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discussed below, nor reflected in our findings and conclusions, have been considered and found not justified.

Internal reorganization.—All of the petitions, with the exception of those of the Lynch interests, the Florida commission, and the Coast Line, request that we modify the approved plan by rescinding our order approving a plan of reorganization providing for the merger or consolidation of the debtor's properties with the Coast Line and, in lieu thereof, approve a plan providing for the internal reorganization of the debtor and contemplating its continued independent operation. The St. Joe Company and the debtor's first and refunding mortgage trustee would substitute the plan previously proposed by the St. Joe Company for the approved plan. The modifications are requested on the ground that the approved plan is based on erroneous findings of fact and conclusions of law. To a great extent, these petitioners rely upon the arguments and contentions previously advanced by them and which, in our opinion, were adequately discussed in our fifth supplemental report. We will treat in detail, therefore, in this supplemental report only the petitions and arguments which we believe indicate the desirability of clarification of our findings and conclusions. These include the petitions of the Florida commission, the Lynch interests, and the Coast Line.

In our fifth supplemental report, we gave our reasons for not approving either of the plans proposed by petitioners W. G. Welbon and others and F. K. Conn and others. The plan proposed by the latter group of petitioners was not disapproved, as indicated in their petition, solely because it made no provision for the issue and distribution of bonds. Neither was the plan proposed by petitioners W. G. Welbon and others disapproved because no court decisions which could be considered as controlling in the tax situation presented by this proceeding were called to our attention in the briefs of the parties, as indicated in the petition of this group. Those plans, as well as the St. Joe Company plan, were disapproved basically because they contemplated an internal reorganization under which the St. Joe Company and the Du Pont interests would control the reorganized debtor.

The approved plan is predicated, among other things, upon our findings and conclusions that (1) it would be incompatible with the public interest for the St. Joe Company to control the debtor's property; (2) the public interest in its broader concept will be better served by integration of the debtor into a larger railroad system than its continued operation as an independent railroad; (3) it will be compatible with the public interest for the Coast Line to control the debtor's property; (4) the interests of the railroad employees

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affected by the merger will be adequately protected; (5) the effect of a merger upon the Southern Railway system and Seaboard Air Line Railroad Company, if any, will not adversely affect the public interest; (6) there should eventually result savings through a unification of the two carriers of between $850,000 and $1,000,000 per annum, through (*a*) eventual unification of the executive and supervisory forces of the two carriers; (*b*) consolidation of interchange yards and facilities at Jacksonville; (*c*) unification of operations of the freight stations of the two carriers at Jacksonville; and (*d*) coordination and consolidation of off-line traffic offices of the two carriers; (7) there would be betterment of service to the public resulting from a unification of the debtor's line with that of the Coast Line; (8) the apprehensions of the citizens and communities of the east coast of Florida that a merger would adversely affect their interests are not justified since (*a*) it would be to the interest of the Coast Line to serve all its territory impartially, (*b*) existing through routes via Jacksonville will be maintained, and (*c*) while the Coast Line would attempt to retain its long haul, its appeal to the public would be based principally on the quality of its service, and the traffic relationships between trunk-line carriers would prevent any abuse of power such as would be possible under control of the debtor's line by the St. Joe Company; (9) the merger of the debtor with the Coast Line will be of appreciable benefit in assuring greater financial stability for the debtor; and (10) in general, there is a substantial preponderance of evidence that a merger would insure a more adequate, economical, and efficient transportation service than would operation of the debtor by the St. Joe Company.

As indicated, certain of the petitioners disagree with those findings and the preliminary findings upon which they are based. A detailed analysis of the evidence upon which the findings and conclusions are based is contained in our fifth supplemental report in this proceeding, and no useful purpose would be served by repeating the discussion contained therein. Upon further consideration, we are satisfied that those findings and conclusions are warranted, and we affirm them.

Petitioners F. K. Conn and others contend that we have misconstrued the standard of "public interest" to be applied in a bankruptcy proceeding. They suggest that when the Bankruptcy Act refers to "public interest," it refers principally to the interests of the public in financial stability, and that the public interest to be protected under the act is principally the interest of investors in railroad securities. They, and others of the petitioners, allege that we have been so preoccupied with the question of control as it relates to the public interest that we have subordinated the question of the fairness and equitable-

ness of the plan. They insist that any plan which contemplates a merger of the debtor with the Coast Line under the existing situation will of necessity be at the expense of the debtor's creditors, because the Coast Line will not accept it unless it is able to acquire the debtor's properties at a bargain price. It is true that the question of control has bulked large in this proceeding. However, since under the statute, in approving a plan of reorganization, we must find, among other things, that the plan will be compatible with the public interest, the issue must be met. That control of the reorganized company is a vital factor in determining whether the plan is in the public interest is well settled. As is said in the conclusion of the report of the United States Senate Committee on Interstate Commerce, dated July 29, 1935, 74th Congress, 1st session, accompanying the bill under which extensive amendments were made to section 77 of the Bankruptcy Act:

> The amendments to section 77 leave unimpaired the power and duty of the Commission and the Courts to deal with the most important feature of all reorganization plans, that of the control of the reorganized company; and similarly the Commission and the Courts will continue to have the power and authority of making that thorough investigation which is necessary to assure sound and reliable control for bankrupt companies when they emerge from the courts, in place of the type of control under which some railroads have been wrecked.

The fact that the approved plan of reorganization contemplates a merger does not relieve us of our duty to find that such plan as a whole is fair and equitable. And even though this proceeding were one involving only a voluntary merger under section 5 (2) of the Interstate Commerce Act, with no dissents, in approving a merger we would have to find that its terms and conditions were just and reasonable and that the merger would be consistent with the public interest.

Basis of approved compensation.—Having determined that the reorganization of the debtor could best be accomplished through the merger or consolidation of its properties with the Coast Line, our problem then was to determine whether we should approve the plan proposed by the Coast Line with or without modifications. This involved a determination as to whether the total consideration offered by the Coast Line, including all of its terms and conditions, was fair and equitable within the meaning of section 77 of the debtor's creditors and was just and reasonable within the meaning of section 5 (2) of the Interstate Commerce Act to the Coast Line. Our analysis of the Coast Line's proffered consideration convinced us that it was inadequate and, we, accordingly, required substantial modifications thereof.

In determining the compensation to be paid by the Coast Line for the debtor's properties we first determined the capitalization which

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would be warranted under an internal reorganization of the debtor. Under that determination, we found that the debtor would be justified in issuing $13,500,000 first-mortgage 4-percent bonds, $9,000,000 income 4½-percent bonds, and 235,000 shares of common stock of the par value of $100 per share, a total of $46,000,000 face amount of securities, exclusive of equipment obligations. This theoretical capitalization was based upon consideration of the evidence as to the debtor's past and prospective earnings.

Considering that the reorganization is to be accomplished through a merger of the debtor's properties with the Coast Line under which the debtor's creditors would relinquish their rights to sole ownership and future control of the debtor's properties after reorganization, and considering further that unified operations of the debtor and the Coast Line should result in average savings of approximately $925,000 a year, we concluded that the compensation which the creditors of the debtor should receive could best be established by determining the permissible capitalization in Coast Line securities of the debtor's future normal year earnings plus one-half of the average prospective savings. As stated in our fifth supplemental report, our conclusions, however, reflected our consideration among other things, of the past and prospective earning power of the debtor and the Coast Line; the debtor's investment in its plant, including improvements therein, the debtor's rate-making value, and the value of its securities. While we made findings, as requested, of the market values of the securities composing part of the compensation approved, as well as of the securities which we found the debtor would be justified in issuing under a hypothetical plan for an internal reorganization, our initial and basic determination of the compensation to be paid by the Coast Line, as reflecting the value of the debtor's properties and the other intangible factors involved, was in Coast Line securities. Such a determination, in our opinion, more nearly insures the debtor's creditors receiving the equitable or economic equivalent of the rights surrendered as required by the decisions of the courts. See *Ecker* v. *Western Pac. R. Corp.*, 318 U. S. 448; *Group of Institutional Investors* v. *Chicago, M., St. P. & P. R. Co.*, 318 U. S. 523; and *Schwabacher* v. *United States*, 334 U. S. 182. As finally determined, the approved plan provides that the Coast Line pay $4,000,000 cash, assume obligation for all the debtor's equipment obligations outstanding on December 31, 1949, issue $14,000,000 divisional first-mortgage bonds, $13,500,000 divisional income bonds, $9,000,000 preferred stock and $6,000,000 common stock for the debtor's properties, a total including $5,314,086 of equipment obligations outstanding at the date of our last hearing, of $51,814,086 face amount of cash, securities and obligations to be assumed.

As will be noted, while the amount of the approved compensation in cash and securities to be received for the property and for one-half the savings differs in face amount from the capitalization found by us as permissible for the debtor under a theoretical internal reorganization by only $500,000, there is a material difference in the amount and character of the securities comprising the two. Thus, the approved compensation consists of $500,000 more first-mortgage bonds, and $4,500,000 more income bonds, and while the total amount of common stock is reduced from 235,000 shares to 60,000 shares, there is added 90,000 shares of preferred stock, and $4,000,000 of cash. It must further be borne in mind that the new securities will be supported by the income of the combined properties.

As compared with the Coast Line proposed plan, including the securities at their face amounts, the approved plan provides, in effect, for an increase of $6,635,814 over the consideration proffered by Coast Line. The items making up the increase are a reduction of $2,478,000 in the cash reserves to be set up out of the debtor's funds for improvements and betterments, and increases of $500,000 of first-mortgage bonds and $4,500,000 of income bonds. These items total $7,478,000 and are partially offset by a reduction of $842,186 in the cash which would be payable by Coast Line.

Debtor's future normal year earnings.—The Lynch interests propose that we modify our fifth supplemental report by finding that the capitalizable value of the debtor is at least $58,000,000, plus the capitalized value of the earnings attributable to added traffic from a new cement plant to be built on the line of the debtor. This group insists that such a finding is amply justified by the debtor's future normal year earnings, together with credit for one-half of the estimated unification savings that will result from acquisition of the debtor's properties by the Coast Line. It contends that the debtor's income available for fixed charges and Federal income taxes in a future normal year should be fixed at $2,855,000, as estimated by its witness Gordon, rather than in the amount of $2,300,000 found by us in our fifth supplemental report.

In our analysis of the evidence with respect to the debtor's past and prospective earnings in our fifth supplemental report, we found that certain adjustments should be made in the debtor's reported income for extraordinary and nonrecurring items. One of these concerned expenditures incurred in a rail-relaying program during the years 1946–50. We held in effect that all of the charges to operating expenses for the rail program should not be deducted in determining income available for fixed charges, and adopted, with reservations, the adjustment proposed by one of the witnesses for the Coast Line.

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The Lynch interests construe our discussion to mean that we also accepted as correct their criticism, on brief of the Coast Line proposed adjustment, and would adjust the amounts reported for income available for fixed charges by the exact amounts suggested by them, which would result in increased amounts of income available for fixed charges in the years in question. As indicated, the group's criticism in this respect was made on brief, and no witness was presented by them at the hearing to support the amounts by which it would adjust these items. In our opinion, the subject of these adjustments and the reasons for our conclusions thereon were adequately discussed in our fifth supplemental report, which mentioned that the criticism of the Lynch interests would be taken into consideration; and consideration was given to such criticism in arriving at our conclusion with respect to the debtor's future normal year income.

These petitioners also insist that certain other factors referred to in our analysis of the debtor's past earnings would tend to increase the income found by us for those years in our fifth supplemental report, and that taken as a whole our analysis more nearly supports the estimate of the debtor's future normal year earnings made by their witness Gordon than the amount found by us. They would have us ignore or attach no weight to the estimates of the trustee of the debtor because they say, among other things, that he is fundamentally conservative, or to the estimates of the St. Joe Company and the Coast Line, because it is said they are both trying to acquire the debtor's properties as cheaply as possible. The implication, however, that for these reasons we should accept the estimate of their witness as correct ignores their interest in obtaining approval of a plan which would provide for the payment of the highest possible price for the properties.

As shown in the analysis of Gordon's study in our fifth supplemental report, his estimate represented his conclusions as to the debtor's probable average earnings for the "next 4 or 5 years" (his testimony was given early in 1949), and, as pointed out by the Coast Line, it is only fair to infer that his forecast was based directly upon his own calculation of $2,855,000 as the adjusted balance available for fixed charges and Federal income taxes for 1948, since both that amount and the amount he used for revenues ($29,000,000) closely relate to those estimated by him for the year 1948, and are not very close to his adjusted figures for 1946 and 1947. (His study of post-war earnings was limited to reported income for the years 1946, 1947, and 1948, with income of the last 2 months for 1948 estimated.) Reported income available for fixed charges and Federal income taxes for 1949, after adjustments for all nonrecurring items, including all

charges to operating expenses for the rail program, as calculated by the debtor's trustees, is $2,391,741, or $458,259 less than Gordon's forecast, and such income as found by us after adjustments, is $834,030 less than his forecast; and his estimate of $2,855,000 for 1948 is $362,809 more than such adjusted income as found by us for that year.

Our task, as we see it, involves more than estimating earnings for a future period of only 4 or 5 years. A reorganization designed wholly on the basis of the probable earnings of the debtor for such a period would not conform to the clear intent of the Congress to avoid an early repetition of financial difficulties causing bankruptcy. While the debtor's 1950 earnings available for fixed charges and Federal income taxes, as adjusted by us, exceed those found by us for the debtor in the future normal year, the 1950 income reflects the inflationary effects of the current national defense program. Even if we assume that such conditions may continue for the next few years, earnings resulting therefrom in our view, must be considered to be substantially higher than normal. Nevertheless, it should here be pointed out that the recent earnings of the debtor were considered in determining the fairness of the plan. The arguments of counsel might give rise to the thought that the normal year earnings alone were considered by us. It is clear, however, that the possibility of earnings considerably in excess of those currently realized was considered. We pointed out that the 1950 earnings per share of stock would amount to $3.84 per share under the hypothetical plan for internal reorganization and further that earnings of $6,000,000 per year, or more than twice the 1950 earnings, would develop per share earnings of $11.53. Earnings in a normal year under such plan would be $2.88 per share. The approved plan, as hereinafter shown, reflects not only the estimated normal conditions, but the current and possible future conditions. Our findings as to the debtor's future normal year earnings were made after a careful consideration of all of the evidence of record, and represents our considered judgment. We are unable to approve the Lynch interests' request that we modify our fifth supplemental report in this respect. Insofar as the increase in revenues which may result from the prospective leasing by the trustee of the spur track referred to by these petitioners is concerned, our finding in respect of future normal year earnings obviously contemplates that new sources of revenues will become available as well as that revenue from certain old sources may diminish.

Capitalization of earnings and savings.—The Lynch interests also contend that we have not provided adequate compensation for either the increase in direct earnings found by us in our fifth supplemental

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report over those found in our previous reports or for the unification savings attributable to the debtor. The increase in direct earnings are calculated by them as approximately $500,000 which they assert if capitalized at 5 percent, would reflect an increased capitalization of $10,000,000. The capitalization of $462,500 representing one-half of the average unification savings at 6.3 percent would produce an additional $7,345,000. The sum of these two amounts is $17,345,000. Since the approved plan provides for the issue of only $42,500,000 face amount of securities, exclusive of equipment obligations, an increase of only $6,225,000 face amount of securities, exclusive of equipment obligations, over those provided for in our fourth supplemental report, the petitioners contend that it is obvious that we have not provided adequate compensation for either the increase in direct earnings or for the unification savings attributable to the debtor. This argument or illustration, in our opinion, for the reasons set out below, is fallacious.

Permissible capitalizations are not determined by us solely, as these petitioners apparently assume, by capitalizing assumed earnings at stated percentages. The determinations of capital structures for reorganized railroads are not such simple matters. Such computations admittedly are important checks or steps in the final determinations, but a careful reading of our fifth supplemental report will clearly show that many other factors were taken into consideration in determining the permissible capitalization of the debtor under a hypothetical reorganization and the compensation which the Coast Line should pay for the debtor's properties.

This group contends that we should find that the capitalizable value of the debtor's properties is $58,000,000, which is approximately the amount which would be obtained by adding $17,345,000 to the $40,500,000 permissible capitalization approved in our fourth supplemental report. The petitioners reach the $58,000,000 ($57,345,000 rounded out), not by applying the 5 percent to the $2,300,000 debtor's future normal year earnings as found by us, but by starting with the permissible capitalization approved in our fourth supplemental report as a base and using the capitalization percentages given above in calculating what they contend should be added to the base. If the $500,000 increase in direct earnings as calculated by petitioners were added to the $1,500,000 found in our fourth supplemental report as the debtor's future normal year earnings, the capitalization of the resultant $2,000,000 at 5 percent would produce only $40,000,000, and the addition of $7,345,000 (obtained by capitalizing $462,500 at 6.3 percent) would produce only $47,345,000 instead of $57,345,000.

Mere comparisons of total permissible capitalizations alone may give misleading answers. For instance, from a mere comparison of

the $46,000,000 permissible capitalization found by us for the debtor under a hypothetical plan for an internal reorganization with $45,500,000 capitalization in Coast Line securities found by us as permissible in arriving at the compensation to be paid by the Coast Line for the debtor's properties and securities representing savings, it might appear that we had failed to give adequate effect to one-half of the average savings that will result from unification of the debtor's properties with the Coast Line. As previously pointed out there is a substantial difference not only in the character and quality of the securities to be paid by the Coast Line but also in the amount of such securities. Thus, the approved compensation consists of $500,000 more first-mortgage bonds and $4,500,000 more income bonds and while the total amount of common stock is reduced from 235,000 shares to 60,000 shares, there is added 90,000 shares of preferred stock, and $4,000,000 of cash.

Market values.—The Coast Line requests that we consider whether we should not modify the approved plan so as to reduce the securities which it would provide thereunder. Its main contention in this respect is directed toward the fair market value of the debtor's one-half of the unification savings. It suggests that since we found the fair market value of the securities which the debtor would be justified issuing under the hypothetical plan for an internal reorganization would be $29,364,086, based on earnings of $2,300,000, there should be applied to the savings of $462,500 the ratio of 12.77 established by the fair market value of $29,364,086 and the earnings of $2,300,000, which, in turn, would produce the amount of $5,906,125. The latter amount, plus the $29,364,086, equals $35,270,211, or $8,423,875 less than the $43,694,086 which we found as the fair market value of the cash and securities which should be paid and issued by the Coast Line for the debtor's properties.

This request is in line with the contention made by the Coast Line and considered by us in our fifth supplemental report that the standard to be used in measuring the fairness and equitableness of the compensation which it should pay for the debtor's properties is "real worth" and that "fair market value" is a sound measure of "real worth." While we considered the evidence of all of the witnesses with respect to the market value of the securities which would be issued under the various proposed plans, and as requested made findings with respect thereto, as well as of the securities which we found the debtor would be justified issuing under an internal reorganization and of the securities which we found should be issued by the Coast Line as part compensation for the debtor's properties, we rejected the Coast Line's contention that the controlling standard in

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determining such compensation is real worth computed by the application of estimated fair market prices.

We are unable to accept the above illustration as justification for reducing the securities which we found the Coast Line should issue as part compensation for the debtor's properties, not only because it is based solely on market values, but also because its acceptance would imply that in determining the compensation to be paid by the Coast Line for the debtor's properties we merely capitalized one-half of the average unification savings and added that amount to the permissible capitalization found for the debtor under a hypothetical plan for its internal reorganization. It is true that as a first step we found a permissible capitalization for the debtor without regard to possible unification savings. As indicated hereinbefore, however, since the reorganization is to be accomplished through the merger of the debtor with the Coast Line, and involves the issuance of Coast Line securities, which, in turn, means that the creditors of the debtor would surrender control of the debtor and would lose the opportunity of benefiting alone from the future earnings of the debtor whether or not such earnings were unexpectedly high, we were required to consider not only the future normal year earnings of the debtor, but also those of the unified properties, including unification savings. While it might be inferred from isolated statements in our fifth supplemental report that the compensation approved was obtained merely by capitalizing one-half of the average unification savings and adding that amount to the permissible capitalization found for the debtor under an internal reorganization, we believe that a careful analysis of the report will show otherwise.

In this connection, the Coast Line suggests that we show that the approved plan provides far more for the creditors of the debtor than could be provided in any internal plan under which there would be a ratable distribution, and that the margin of difference is considerably more than is necessary to allow equitably for the prospective savings. Contrary to the latter suggestion, our report pointed out that our conclusions would reflect capitalization of the debtor's share of the earnings at 6.3 percent. Such a rate would represent a total capitalization for one-half the savings amounting to approximately $87,340,000. Since the amount of the savings and the length of time which would elapse before they are realized is somewhat uncertain, it seemed proper that approximately two-thirds should be capitalized in Coast Line proposed income bonds and one-third in Coast Line common stock.

The remaining securities and cash provided for in the plan reflect roughly the securities which would be received for the debtor's prop-

erty, and which may be compared with the securities which would be received under an internal reorganization. Under the plan for merger, in the normal year, excluding interest on cash receivable, the interest on such bonds and earnings on the preferred and common stock would total $1,712,650 if the L. & N. dividends are included and $1,394,590 if they are excluded. Under an internal reorganization such interest and earnings would total $1,621,500. In a year such as 1950, such interest and earnings would total $2,496,550 if the L. & N. dividends be included, and $2,172,460 without such dividends. Under the internal plan, in 1950 such interest and earnings would total $1,847,652.

Coast Line paid dividends of $4 per share on its common stock in the years 1946 through 1950. In 1951 three quarterly dividends of $1.25 have been paid, and at this rate the annual dividend would be $5 per share of common stock. On the basis of $4 annual dividends on common stock, the securities allocable to the debtor's property under the approved plan for merger (excluding securities allocable to the savings) would produce income of $1,396,750; and this figure does not take into account interest which could be earned on the $4,000,000 of cash which would be payable by Coast Line. Under an internal plan, assuming a $2 dividend on the common stock, the annual income would be $1,415,000.

The problem in this case involves approval of a plan which is fair not only at the present time, but under normal conditions and foreseeable future conditions. The foregoing supports the fairness of the plan from an earnings standpoint. No reliable means are available for computing security prices under any conditions excepting those existing at the time the record was made. This fact emphasizes our reasons for denying approval of such a method of solving the problem. Our method of capitalizing the earnings and savings in Coast Line securities affords a comparison of the results on the basis of the earnings of the securities, thus eliminating the fluctuating price-earnings ratio.

The foregoing analysis supports our conclusion that the approved plan is fair and equitable.

As indicated, our further consideration of this question convinces us that we should not modify the amount of securities to be issued by the Coast Line.

Cash reserves.—The Lynch interests, the Florida commission, and the Coast Line, each request that we modify the approved plan in respect of the cash reserves provided for therein for working capital and stations and terminal facilities. The Lynch interests would have us eliminate the entire reserves for these items. The Coast Line would have us restore to the reserves the full amount which it provided for in its proposed plan for station and terminal facilities. The Florida

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commission would have us reserve "sufficient to meet the entire cost of new passenger station facilities at Miami, Fla.," authorize the trustees of the debtor to spend "such amount in cash as may be necessary for the preparation of detailed plans and specifications for such facilities," and enter an order either approving the plan for the relocation of the passenger station facilities of the debtor at Miami as found and ordered by it in its order No. 1567, or holding that approval thereof by us is not necessary. The Florida commission also requests, if we think necessary, the opportunity to introduce further evidence in support of its position.

In respect of the petition of the Florida commission, we held in our fifth supplemental report that, until the details of the changes in the Miami facilities are presented to us, we could not determine whether or not it is a matter which requires our approval under the Interstate Commerce Act, and we could not approve any specific plan for relocation of the facilities until it is presented to us through an appropriate application. We further held that the issues of fact and law concerned in such an application had not been appropriately presented in this proceeding. We cannot accept the material contained in the Florida commission's petition as a satisfactory or adequate substitute. Neither do we feel justified in reopening this proceeding, with the resultant delay in consummating the debtor's reorganization, as requested by the Florida commission.

The Lynch interests contend that the cash reserves are not required by the public interest and that the original purpose for them no longer exists. These petitioners insist that the improvement program established in earlier plans was accepted by the debtor's bondholders on the basis of our original findings that they would own the equity in the property and on the basis that the improvement program would add materially to their properties and to the future return on their investment, even though it meant withholding cash otherwise available for interest distributions. They urge that the proposed improvements are not reflected in the earning capacity of the debtor (which, in turn, they state is translated into the purchase price to be paid by the Coast Line) or in the indicated unification savings, and that, therefore, there is no reason in law or equity for reducing the debtor's cash by establishing these reserves for improvements. They also urge that since the Coast Line has adequate cash for working capital there is no necessity for establishing a cash reserve for that purpose.

The question of these cash reserves is treated at some length in our fifth supplemental report. Their history and the purposes to be served by them were there considered. We stated that in our view the debtor's cash should be taken for rehabilitation of the property

only when it appears that the contemplated improvements are required by the public interest and except for the intervening bankruptcy should have been constructed during the bankruptcy period and should be immediately undertaken, or where they clearly are included in the valuation of the property reflected in the issue of securities. The cash reserves for improvements established in the approved plan fall in those categories. It is true that the record does not disclose that the Coast Line would be unable to finance the improvements. However, we deem that the public interest requires that the reserves established be provided for in the plan. It also is true that we do not consider that the debtor's future normal year earnings found by us reflect the proposed improvements. There can be little or no question, however, that the total compensation offered by the Coast Line was influenced by the fact that these improvements must be made, and the compensation to be paid by the Coast Line for the debtor's properties as approved by us also reflects that fact; and if provision for these reserves were not made, justice would require a reduction in the compensation to be paid by Coast Line. Insofar as the cash reserve for working capital is concerned, that reserve, as well as the one for material and supplies, is considered as an essential element in evaluating the debtor as a going concern. The compensation which we have approved contemplates the purchase of the debtor as a going concern, and not merely its physical properties. Working capital, as well as physical equipment, is required in the conduct of a going concern.

The Coast Line's proposal that the cash reserves for station and terminal facilities be increased to the amount provided for in its plan is based on the reasons originally advanced by it. Our basis for establishing the reserves in the amounts approved are set out in our fifth supplemental report, and upon reconsideration we see no reason for changing our findings and conclusion in this respect.

Determination of cash assets.—In our fifth supplemental report and order provision is made for the determination of the debtor's cash assets on the basis of computed net current assets for the purpose of determining the amount of cash distributed under the plan. In connection therewith we required that there be included the amounts shown in Accounts Nos. 770 and 778, which are respectively, "Other Deferred Liabilities" and "Other Unadjusted Credits." The Lynch interests point out that no reference is made to inclusion of the corresponding offsetting items in Accounts Nos. 722 and 727, which are respectively, "Other Deferred Assets" and "Other Unadjusted Debits," and request that we modify the plan so as to include the latter two accounts. The Coast Line states it is not in disagreement with the Lynch interests as to certain of the principles which should be fol-

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lowed. It suggests that, since the purpose of the compensation formula is to determine what amount should be deemed to constitute "the adjusted net current assets" for the purpose of calculating the cash distribution, the unadjusted credits and deferred liabilities should be taken into account only to the extent that they should, for the purposes of the formula, be considered the equivalent of current liabilities, i. e., only to the extent that it is expected that they will have to be paid in cash, and that the unadjusted debits and deferred assets should also be taken into account to the extent that they should, for the purposes of the formula, be considered the equivalent of current assets, i. e., only to the extent that cash may be expected to be realized from them. We agree with the Coast Line that it is more appropriate that only cash items in these four accounts should be given effect in the computation. We will modify the plan so that the first three sentences in section VII shall read as follows:

The debtor's cash assets shall be determined by deducting from the total current assets of the debtor computed as of the consummation date, including current assets accounts 708 to 719, inclusive, and account 704, the total of current liability accounts 758 to 768, inclusive. In making the computation account 767 shall be adjusted, if necessary, so that it will reflect the total tax liabilities without deduction of probable recovery under claims against the Government for taxes previously paid or income tax carry-backs; amounts so recovered for the period to date of consummation shall be distributed to the first and refunding bondholders. The balance obtained through the computation should be further adjusted by giving effect to any cash items in accounts 722, 727, 770, and 778 or other accounts.

P & O dock and Hialeah tracts.—The plan approved provides that the reorganization managers shall determine, subject to the approval of the court, what portions, if any, of two tracts of land owned by the debtor, commonly known as the P & O dock tract and the Hialeah tract, are not necessary for the operation of the railroad and can be advantageously sold. It further provides that in the event of such sale, the proceeds thereof shall be distributed to the first and refunding bond holders. The Coast Line suggests that our report indicates clearly that we intended to exclude from the sale provision any portions of either of the two tracts which are leased and return a reasonable income on their value because such income is included in the earnings used to estimate the value of the property. It contends that when we used the words "can be advantageously disposed of" in the plan as part of the test in determining what portion should be sold, we intended to cover this point. It further points out that if we intended to have the court apply the test whether or not the properties return income, it would be better to have the provisions of the plan specify the test more precisely in order to avoid controversies. It requests that we modify the provisions of the plan by providing that

the test to be applied with respect to the leased portions be simply whether they produce income, or possibly whether they produce more than a nominal income. With respect to the portions of the tracts which are not leased, it suggests that the test should not be whether or not they are "necessary for the operation of the railroad" but whether or not they "are held for railroad purposes."

Obviously, it would be improper to provide in the plan for the exclusion of any of the debtor's property which is used and useful for railroad purposes, or properties producing income—the income from which appreciably affects the debtor's earnings. As indicated in our fifth supplemental report, the record did not and does not permit a finding in these respects as far as these two tracts of land are concerned. Consequently, we included the provisions in question to cover this point. The requested modifications of the Coast Line, in our opinion, are too broad. Possibly, all of the property has been used, or was intended to be used, at one time or another for railroad purposes. The questions are whether or not it is now used or useful for railroad purposes, and whether or not it is making a contribution to the debtor's income to the extent that its sale would appreciably affect it. These are matters which the reorganization managers may, with the approval of the court, determine, and if the court believes that the provisions in question require clarification, the court will be able to supply the necessary clarifications or interpretation.

Court imposed liens.—The approved plan contains two provisions with respect to the treatment of any liens which the court may have provided for or may later provide for as a result of expenditures of the debtor's cash for improvements to its property. One of the provisions relates to liens imposed for expenditures made after the hearings before us in 1950, and requires their payment in cash. With respect to liens imposed prior to July 1950, the Lynch interests request that we modify the provisions of the plan relating to them so as to provide also for their payment in cash. The group insists that such treatment must be so provided in order to comply with the court orders imposing the liens. This question is treated at length in our fifth supplemental report, and no useful purpose would be served by repeating the discussion therein. We are satisfied that the approved provisions fully protect the rights of the debtor's first and refunding bond holders.

Computation date vs. consummation date.—The plan approved by our prior report provided that the rights of creditors as to distributable cash would be determined with reference to a "computation" date, which would be the January 1 or July 1, whichever is nearer, next preceding the date of consummation of the plan. In this connection

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the Coast Line calls attention to a statement in our report that "the creditors of the debtor will receive the income from operations up to consummation date after deduction of the depreciation charges," and Coast Line's petition expresses the view that such statement involves a verbal inconsistency with the definitive provisions of the plan, in that the latter reflect the conception that the creditors of the debtor should receive the earnings from the estate (subject to such deductions as the plan provides) up to the computation date. It states that this should be clarified in order to avoid possible controversy in the future. The St. Joe Company objects to the use of what it characterizes as a "retroactive effective date," and in effect argues that the rights of creditors should be determined as of the actual date of consummation. It contends that had the transaction been consummated July 1, 1951, with resulting computation date of January 1, 1951, this would have resulted in Coast Line receiving $1,455,567 of cash which equitably should belong to the debtor's bondholders. While our calculations indicate that the amount would be somewhat less, nevertheless, it is apparent that the sum would have been substantial.

The prior report evidences a clear intent that the creditors should receive the benefit of any earnings of the debtor accruing prior to consummation of the plan. However, the provisions of the plan itself, as contended by the St. Joe Company, might result in depriving creditors of the full benefit of possible high earnings between the computation and consummation dates. Accordingly, upon reconsideration, and in line with our original intent, we find that the plan should be modified in such manner as to eliminate the use of a computation date, and to provide for the substitution of the actual date of consummation, for the purpose of determining rights of the creditors and Coast Line. The necessary revisions to accomplish this purpose are set forth in our accompanying order.

Corrections.—On our own motion, we find that the following errors in amounts and language appearing in our fifth supplemental report should be corrected and, as corrected, should read:

The amount of total railway operating revenues for the year 1946 stated as $26,543,438 in the tabulation on sheet 18 should be stated as $26,543,488.

The average amount of the debtor's railway operating revenues for the years 1946–48 stated as $27,497,127 in the eighth line in the first full paragraph on sheet 25 should be stated as $27,417,007. The amount for road and equipment stated as $78,528,615 in the fifth line in the first paragraph on sheet 29 should be stated as $78,528,415.

The amount of interest in default stated as $42,233,870 in the sixth

line of the second paragraph on sheet 29 should be stated as $46,233,870.

The average amount of the debtor's railway operating revenues for the years 1947–49 stated as $27,332,709 in the ninth line in the first full paragraph on sheet 25 should be stated as $27,203,227.

The words "cash plus" used in the third line of the last paragraph on sheet 56 should be deleted.

The words "the cash plus" used in the third line of first paragraph ending on sheet 57, and in the seventh line of the same paragraph, should be deleted.

The amount of the estimated costs for 12 passenger stations stated as $976,000 in the second line of the fourth full paragraph on sheet 83 should be stated as $1,196,000.

The amount of materials and supplies stated as $3,520,000 in the second line in the next to the last paragraph on sheet 83 should be stated as $3,769,663.

Conclusions.—Upon consideration of the record and the beforementioned petitions, we conclude and find:

1. That our prior report and order, dated July 12, 1951, approving a plan of reorganization for the Florida East Coast Railway Company, pursuant to section 77 of the Bankruptcy Act, should be modified and amended, as specified herein and in our accompanying order, that the findings contained in said report, except as modified herein, should be, and hereby are, affirmed, and that, as thus modified and amended, the plan will meet the requirements of section 77(b) and (e) of the Bankruptcy Act, as amended, will be compatible with the public interest, and should be approved.

2. That, except and to the extent set forth above, the petitions for modification should be denied.

An appropriate supplemental order will be entered.

MAHAFFIE, *Commissioner*, dissenting:

In connection with the fourth and fifth supplemental reports in this proceeding I stated the reasons why, in my opinion, the plans then approved should have been rejected. I ventured the opinion that approval would "unnecessarily postpone the termination of this already protracted proceeding." And added that I would approve a plan substantially as proposed by the St. Joe Company. On further consideration I adhere to the views then expressed.

I am authorized to state that CHAIRMAN SPLAWN and COMMISSIONER LEE join in this expression.

COMMISSIONER MITCHELL did not participate in the disposition of this proceeding.

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APPENDIX

Plan of reorganization of Florida East Coast Railway Company approved by the Interstate Commerce Commission in its fifth supplemental report and order of July 12, 1951, as modified by its sixth supplemental report and order of October 25, 1951

I. CONSUMMATION DATE OF THE PLAN

The plan shall be consummated on a date (herein called the "consummation date") to be fixed by the court and to be as soon as practicable after the confirmation of the plan. The rights of the creditors as to cash distributable to them shall be determined as of the consummation date.

II. TRANSFER OF THE DEBTOR'S PROPERTIES TO ATLANTIC COAST LINE RAILROAD COMPANY

On the consummation date all the business, assets, franchises, and property of every kind and character, real, personal, and mixed; constituting the estate of the debtor, and all right, title, and interest of the trustees of the debtor's estate therein, shall be vested in the Atlantic Coast Line Railroad Company by merger of the debtor into, or consolidation of the debtor with, the Atlantic Coast Line Railroad Company, or, if the court shall approve, by transfer and conveyance by the said trustees of the property of the debtor to the Atlantic Coast Line Railroad Company, subject, however, and in diminution of the foregoing property, to the sale by the reorganization managers, with the approval of the court, of such portions, if any, of the Peninsular & Occidental Steamship Company tract and the Hialeah tract as they shall determine, with the approval of the court, are not necessary for the operation of the railroad and can be advantageously disposed of. In the event of such sale, the proceeds thereof shall be distributed to the first and refunding bond holders.

III. PROTECTION OF THE INTERESTS OF EMPLOYEES

The authorization hereafter to be granted upon confirmation of the plan for the acquisition by the Atlantic Coast Line Railroad Company of the properties of the debtor shall be upon condition that during the period of 4 years from the date the properties of the debtor become vested in the Atlantic Coast Line Railroad Company such transaction will not result in employees of the carrier or carriers by railroad affected by such acquisition being in a worse position with respect to their employment, except that the protection afforded to any employee pursuant to such condition shall not be required to continue for a longer period, following the date of such acquisition, than the period during which such employee was in the employ of such carrier or carriers prior to the date of such acquisition, provided, however, that nothing in such condition shall bar the Atlantic Coast Line Railroad Company and authorized representatives of employees of the carriers from entering into agreements for the protection of the interests of the employees.

IV. MAINTENANCE OF EXISTING JOINT THROUGH ROUTES

All existing through routes via Jacksonville, Fla., to and from points now served by the debtor in connection with Seaboard Air Line Railroad Company and Southern Railway system shall be kept open.

V. DISCHARGE OF CLAIMS

On the consummation date of the plan the debtor shall be discharged from all obligations other than claims to be paid or to be assumed as hereinafter in this plan provided; and, except as may be necessary to give effect to any orders of the court hereinafter referred to in section IX (A) or any similar orders, all mortgage bonds, notes, certificates and shares of stock, and other claims against the debtor or its property, other than as aforesaid, shall, on and after the consummation date, become void and unenforceable against the debtor or the Atlantic Coast Line Railroad Company or the property of either of them.

VI. CASH RESERVES

Upon the consummation of the plan, an amount of cash, to be determined as hereinafter provided in this paragraph, shall be set aside from the debtor's estate as a reserve to be expended for improvements and betterments to the property now owned by the debtor. The cash so set aside shall be taken over and held as a separate fund by the Atlantic Coast Line Railroad Company, to be segregated from its other funds and to be expended upon order of its board of directors exclusively for improvements and betterments to the property now owned by the debtor. The amount of such reserve for improvements and betterments shall be $3,000,000, of which $2,500,000 will be for construction of, or a contribution toward the construction of, a new passenger station at Miami, Fla., and the remaining $500,000 will be for other passenger and freight stations and facilities without specific designation as to the location of the stations for which it shall be used, less as to each of such reserves of $2,500,000 and $500,000, respectively, the net amount of extraordinary expenditures, including expenditures charged to operating expenses, to the extent provided for in the reserve, made by the trustees of the debtor between January 1, 1950, and the computation date in respect of (1) a new passenger station at Miami and (2) other passenger or freight stations and facilities, said net amounts to be the gross amounts less any cash realizations in respect of salvage and the cash value of salvage not disposed of.

Upon the consummation of the plan the sum of $800,000, less the amount of any payments from the debtor's estate for reorganization expenses prior to the date of consummation, shall be set aside for reorganization expenses. The amount so set aside shall, as the court may direct, either be retained in the estate and disposed of pursuant to the orders of the court or taken over and held as a separate fund by the Atlantic Coast Line Railroad Company, to be segregated from its other funds and to be expended, to the extent of the amount thereof, for reorganization expenses allowed by the orders of the court. If the reorganization expenses allowed by the court shall exceed $800,000, the excess shall be paid by the Atlantic Coast Line Railroad Company. If the reorganization expenses shall be less than $800,000, the remainder shall be paid to the first and refunding mortgage bond holders.

VII. CASH DISTRIBUTION

The debtor's cash assets shall be determined by deducting from the total current assets of the debtor computed as of the consummation date, including current asset accounts Nos. 708 to 719, inclusive, and account No. 704, the total of current liability accounts Nos. 758 to 768, inclusive. In making the computation account No. 767 shall be adjusted, if necessary, so that it will reflect the total tax liabilities without deduction of probable recovery under claims against

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the Government for taxes previously paid or income tax carry-backs; amounts so recovered for the period to date of consummation shall be distributed to the first and refunding bond holders. The balance obtained through the computation should be further adjusted by giving effect to any cash items in accounts Nos. 722, 727, 770, and 778 or other accounts. To the adjusted net current assets so determined shall be added (1) the cash payable by the Atlantic Coast Line Railroad Company under the plan, including any cash so payable to satisfy court-imposed liens for future improvements as herein specified, (2) any part of the $800,000 allowance for reorganization expenses not required for that purpose, and (3) any amounts representing refunds of income taxes and income tax carry-backs for period to date of computation, and from the resulting amount shall be deducted the $3,000,000 reserve for stations and facilities, $2,600,000 reserve for materials and supplies, and $1,000,000 allowance for working capital (a total of reserves and allowances of $6,600,000) adjusted as provided in section VI hereof. Out of the balance remaining the following payments in the order shown shall be made:

(a) Of matured and unpaid obligations of the trustees, including all expenses of reorganization including the reserve of $800,000 for reorganization expenses, and unpaid expenses for the prior receivership proceeding approved by the court.

(b) Of claims entitled to priority over the debtor's mortgage bonds and not assumed by the reorganized company pursuant to the plan.

(c) Of principal of $8,189,000 and accrued and unpaid interest to date of payment of the debtor's first-mortgage 4¼-percent bonds.

(d) Of the $3,811,000 of first-mortgage 4½-percent bonds which the debtor's trustees purchased under authority of court order in document 507 and upon which the court imposed an express trust for the pro rata benefit of the holders of the first and refunding bonds.

(e) Of any liens which the court may determine continue to exist, in the light of our determinations herein, arising out of court orders contained in documents Nos. 588, 595, 662, 703, 705, 707, 765, and 791, including any other similar liens established by the court prior to the Commission's hearings on July 11 to 14, 1950, provided that such liens shall not be paid out of such cash in an amount exceeding the amount by which the total cash paid by the Atlantic Coast Line Railroad Company exceeds the $3,811,000 required to pay the 4½-percent first-mortgage bonds held in trust for the benefit of the holders of the first and refunding bonds.

(f) Of amounts required to effectuate cash settlements of certain unsecured claims as provided herein.

(g) To the Atlantic Coast Line Railroad Company of the amount of the foregoing payments not made by the trustees of $1,000,000 for working capital as described above and the sum of $3,000,000 as a reserve for stations and freight facilities as described above.

(h) Of the remainder pro rata to the holders of each maturity of matured and unpaid interest coupons of debtor's first and refunding bonds, beginning with the earliest maturity, with provision for payment later of any tax refunds received for the period prior to consummation.

VIII. UNDISTURBED SECURITIES

The Atlantic Coast Line Railroad Company shall assume all outstanding equipment obligations of the debtor and of the debtor's trustees. The interests of the holders of claims evidenced by all such equipment obligations will not be materially and adversely affected by the plan.

IX. CASH PAYABLE, AND NEW SECURITIES ISSUABLE, BY THE ATLANTIC COAST LINE RAILROAD COMPANY

If the properties of the debtor be transferred to the Atlantic Coast Line Railroad Company, pursuant to section II hereof, free of the liens provided for in the court's orders contained in documents Nos. 588, 595, 662, 703, 705, 707, 765, 791, and any other liens established by the court prior to the Commission's hearings on July 11 to 14, 1950, and free of any other liens of the debtor's first and refunding mortgage and first mortgage, or of the holders of the bonds issued under either such mortgage (exclusive of any liens established by the court for cash belonging to the creditors of the debtor for purchase of equipment not authorized prior to the Commission's hearings on July 11 to 14, 1950, and for improvements authorized for years subsequent to 1950 which the Atlantic Coast Line Railroad Company shall pay in such amounts as may be finally determined by the court), then in addition to the assumption by the Atlantic Coast Line Railroad Company of the equipment obligations referred to in section VIII, as a consideration for such transfer to the Atlantic Coast Line Railroad Company of the debtor's properties the Atlantic Coast Line Railroad Company shall pay over cash, and issue and turn over securities, for distribution pursuant to the plan, as follows:

	Amount
Cash	$4,000,000
Atlantic Coast Line Railroad Company divisional first-mortgage fixed interest 3¾-percent 25-year bonds	14,000,000
Atlantic Coast Line Railroad Company general income divisional-mortgage 4¼-percent 75-year bonds	13,500,000
Atlantic Coast Line Railroad Company participating cumulative convertible $100 par-value 4-percent dividend preferred stock	9,000,000
Atlantic Coast Line Railroad Company no-par common stock (stated at $100 per share)	6,000,000
Total	46,500,000

An additional 22,500 shares of common stock shall be reserved to implement the provision of the plan that conversion of preferred stock into common stock on the basis of 1 share of preferred stock for 1¼ shares of common stock during a period from any election of the Atlantic Coast Line Railroad Company to redeem the preferred stock and the date when the redemption would become effective.

Any of said Atlantic Coast Line Railroad Company securities may be dated on or as of any date subsequent to the consummation date, which the court may approve, provided that the recipient of the security shall be entitled to receive the same amount or amounts of cash and the same rights in respect of accruals and accumulations of interest or dividends as if such security had been dated as of the consummation date.

IX (A). ALLOWANCE FOR ANY LIENS OF THE DEBTOR'S FIRST AND REFUNDING MORTGAGE, OR OF THE HOLDERS OF THE BONDS ISSUED UNDER SUCH MORTGAGE, WHICH MAY NOT BE DISCHARGED UNDER THE PLAN

If the properties of the debtor be transferred to the Atlantic Coast Line Railroad Company, pursuant to section II hereof, subject to any liens pursuant to any of the court's orders contained in documents Nos. 588, 595, 662, 703, 705, 707, 765 and 791, and any other liens established by the court prior to the Commission's hearings on July 11 to 14, 1950, inclusive, or subject to any other lien or

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liens of the debtor's first and refunding mortgage or of the holders of the bonds issued under such mortgage (exclusive of any liens established by the court for cash belonging to the creditors of the debtor for purchase of equipment not authorized prior to the Commission's hearings on July 11 to 14, 1950, and for improvements authorized for years subsequent to 1950 which the Atlantic Coast Line Railroad Company shall pay in such amounts as may be finally determined by the court), an amount of the cash to be turned over by the Atlantic Coast Line Railroad Company as provided in section IX not exceeding the amount of cash distributable under the plan to the holders of the debtor's first and refunding mortgage bonds (exclusive of the $3,811,000 distributable to them in respect of the purchased first mortgage bonds) shall be applied towards the discharge of such lien or liens. The cash payable by the Atlantic Coast Line Railroad Company shall in no event be reduced by court-imposed liens to less than $3,811,000.

If, after such application of such cash, any such lien or liens shall not have been fully discharged, the remaining amount of such lien or liens shall not be disturbed, and the amount of the Atlantic Coast Line Railroad Company divisional first-mortgage 3¾-percent 25-year bonds to be turned over by Atlantic Coast Line Railroad Company for distribution pursuant to this plan, as provided in section IX, shall be reduced by the remaining amount of such lien or liens (subject to any adjustment the court may determine to be proper with respect to interest accruals). The Atlantic Coast Line Railroad Company may nevertheless issue, and shall be entitled to have the trustee of the divisional first mortgage authenticate, divisional first-mortgage bonds in the full amount specified in section IX, and may retain any of such bonds not turned over for distribution pursuant to this plan. The Atlantic Coast Line Railroad Company may dispose of such retained bonds, at such time or times and in such manner as it may see fit, provided that the proceeds of any sale or other disposition thereof shall be applied to the discharge of such lien or liens, or to reimburse the treasury of the Atlantic Coast Line Railroad Company for payments made by it, in addition to the cash payment provided for in section IX, to discharge such lien or liens.

The Atlantic Coast Line Railroad Company shall pay (in addition to the cash payment provided in section IX) any liens established by the court for cash belonging to the creditors of the debtor for purchase of equipment not authorized prior to the Commission's hearings on July 11 to 14, 1950, and for other improvements authorized for years subsequent to 1950.

X. DIVISIONAL FIRST MORTGAGE BONDS

The divisional first-mortgage bonds shall be direct obligations, unconditional as to both principal and interest, of the Atlantic Coast Line Railroad Company. They shall bear fixed interest at the rate of 3¾ percent per annum, payable on July 1 and January 1, and shall mature 25 years from the date of issue. The total authorized issue shall be limited to $14,000,000 principal amount.

The divisional first-mortgage bonds and the obligations thereunder with respect to both principal and interest shall be secured by a direct first lien on all the debtor's property, including equipment and interest therein, except its cash, accounts receivable, and such other current assets as are not customarily subject to the liens of railroad mortgages, and its assets not necessary for the operation of the railroad and as may be specified in the mortgage, such first lien to be subject only to any liens on equipment, to any liens referred to in section IX (A) hereof and to any prior charges referred to in section XV hereof. The

first mortgage shall also have a first lien on all property acquired in replacement of any property originally mortgaged, and, in such manner and with such exceptions as may be provided in the mortgage with the approval of the court and this Commission, on all other such property which may be appurtenant to the lines of railroad originally mortgaged.

The new divisional first-mortage bonds shall be redeemable in whole or in part at any time on 30 days' notice at their principal amount and accrued interest plus a premium of 2 percent if redeemed prior to the expiration of a period of 9 years from the date of issue, such premium decreasing by one-eighth of 1 percent on the first day following the end of such 9 year period and an additional one-eighth of 1 percent on the first day of each succeeding year so that there will be no premium or redemption in the last year prior to maturity, except that the bonds will be redeemable for the sinking fund at their principal amount plus accrued interest. Any redemption of less than all of the bonds shall be by lot. The divisional first mortgage shall provide for a noncumulative sinking fund for the bonds, the annual payments to be equal to one-half of 1 percent of the largest principal amount of bonds at any time previously authenticated and delivered. Sinking fund payments shall be applied to the retirement of divisional first mortgage bonds by purchase in open market (at a cost to the sinking fund not exceeding their redemption price) or by redemption, except that not more than $25,000 may be permitted to accumulate in the sinking fund at any time when it is impossible to purchase divisional first mortgage bonds at their redemption price or less.

The first mortgage shall provide, within conditions and limits to be therein prescribed, for the modification and alteration thereof and of any or all supplements thereto and of the rights and obligations of the Atlantic Coast Line Railroad Company and of the holders of the bonds issued thereunder, at any time, by the concurrent action of the Atlantic Coast Line Railroad Company and of the holders of not less than 66⅔ percent of the aggregate principal amount of bonds then outstanding affected by such change or modification; provided, however, that no such change or modification shall (*a*) alter or impair the obligation of the Atlantic Coast Line Railroad Company with respect to payment of the principal of or interest on any first mortgage bonds at the time and place and at the rate and in the currency provided therein, or (*b*) permit the creation by the Atlantic Coast Line Railroad Company of any mortgage or lien in the nature of a mortgage ranking prior to, or on a parity with, the lien of the first mortgage, except as in the first mortgage otherwise expressly provided or (*c*) modify, without this Commission's approval, the provisions of any sinking fund for debt retirement provided for in this plan. Provision shall be made whereby bondholders may vote at such meeting by proxy. Notwithstanding the limitation of clause (*a*) of this paragraph, the divisional first mortgage shall contain a provision in such form and substance as may be determined by the reorganization managers with the approval of the court, that the mortgage may at any time, with the approval of this Commission or such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the Atlantic Coast Line Railroad Company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote so as to postpone the time or times of payment of any vested interest either before or after the interest is due, or the principal of any or all bonds of the mortgage, either before or after maturity, which at such time may be outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date

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designated in the bonds and that the maturity of interests on the bonds may not be postponed for a longer period than 5 years, but in no event beyond the maturity date of the principal of the bonds designated in the bonds, unless such maturity be postponed, in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

XI. GENERAL INCOME DIVISIONAL MORTGAGE BONDS

The general income divisional mortgage bonds shall be direct obligations, unconditional as to principal, of the Atlantic Coast Line Railroad Company. They shall bear contingent interest at the rate of 4¼ percent per annum, payable as, and cumulative to the extent, hereinafter provided, and shall mature 75 years from the date of issue. The total authorized issue shall be limited to $13,500,000 principal amount.

The general income divisional mortgage bonds shall be redeemable in whole or in part at any time on 30 days' notice at their principal amount and accrued interest. Accrued interest shall include any interest payable but not paid with respect to the available net income of the next preceding calendar year and all unpaid accumulated interest (provided that the maximum payable with respect to accumulated unearned interest shall not exceed the maximum hereinafter specified), plus interest at 4¼ percent per annum from the last preceding December 31 to the redemption date. Any redemption of less than all of the bonds, whether at the option of the obliger or for the sinking fund, shall be by lot. Contingent interest on the general income divisional mortgage bonds at the rate of 4¼ percent per annum shall (up to the limit of accumulation hereinafter specified), become owing as a debt on December 31 in each year, if, and to the extent, that the available net income (as defined in section XIII hereof) shall suffice therefor, except that interest at the rate of 4¼ percent for the year prior to maturity of the bonds shall be paid at date of maturity of the bonds whether or not earned. Otherwise interest, if the available net income shall suffice therefor, shall be payable on May 1 of the year next succeeding or thereafter as hereinafter provided. Unearned interest shall accumulate up to a maximum amount of 12¾ percent, but no more. If such maximum accumulation is reached, no further accumulation shall be made unless the amount of the accumulated interest is later reduced, in which case unearned interest accruing after such reduction in accumulated interest may again be accumulated from time to time, but the total accumulation of unearned interest shall never exceed the maximum of 12¾ percent.

Accumulated interest shall be mandatorily payable on May 1 of any subsequent year (*a*) whenever and to the extent that the balance of the available net income of the preceding calendar year after provision for the interest on the divisional first mortgage bonds payable on such May 1 shall suffice therefor, or (*b*) in any event (whether earned or not) at the maturity or on the redemption of the bonds.

The Atlantic Coast Line Railroad Company may at any time in its discretion pay, out of any funds lawfully available therefor, any interest due or accrued on the bonds, even if not earned.

No interest shall be paid on the bonds in any year if the amount shall be less than one-fourth of 1 percent, and all payments shall be in multiples of one-fourth of 1 percent. Any available net income not applied because of the foregoing provision shall be reserved and added to the available net income applicable to the payment of interest on the bonds and to the sinking fund in the succeeding calendar year or years.

The general income divisional mortgage shall provide for annual payments into a sinking fund for the bonds, equal to one-half of 1 percent of the largest principal amount of bonds at any time previously authenticated and delivered, such payments to be made if sufficient available net income for the previous year is available for such purpose under the provisions of the section hereinafter included in this plan entitled "Determination and Application of Available Net Income." Such sinking fund shall be applied to the retirement of bonds by purchase in the open market or by call for tender (but in no case at a price exceeding their principal amount and accrued interest) and to the extent not so applied, to their redemption as herein provided. Bonds shall be called for redemption by lot.

The general income divisional mortgage shall also contain provisions for its modification and other features which shall be similar to those contained in the division first mortgage, and in additional shall prohibit any modification of the provisions of the general income divisional mortgage with respect to the determination and application of available net income. A provision for the postponement of the time or times of payment of interest or principal substantially identical with that in the first mortgage shall, however, be included in the general income divisional mortgage.

The general income divisional mortgage shall be secured by a lien on all the property which is subject to the lien of the divisional first mortgage, the lien of the general income divisional mortgage to be immediately junior to the lien of the divisional first mortgage.

The general income divisional mortgage shall contain provisions permitting the trustees of the general mortgage of Atlantic Coast Line Railroad Company dated March 1, 1950, to hold pledged divisional first mortgage bonds after their maturity without impairment of lien.

XI (A). PREFERRED STOCK

The new Atlantic Coast Line Railroad Company preferred stock shall have a par value of $100 per share.

The holders of the preferred stock shall be entitled to receive when and as declared by the board of directors of the Atlantic Coast Line Railroad Company, dividends of $1 a share on February 1, May 1, August 1, and November 1 in each year. The holders of the new preferred stock shall also participate share for share with the holders of the Atlantic Coast Line Railroad Company common stock in all dividends paid or set aside for payment on the common stock in excess of $4 per share per annum thereon. Dividends on the new preferred stock shall be cumulative to the extent of 12 percent whether or not earned in any year of such accumulation but thereafter only to the extent earned but not declared or paid. In determining the amount of accumulation of dividends at any time, no dividends paid or set aside for payment upon the new preferred stock in any year previous to the first year of such accumulation in excess of $4 shall be credited against the nonpayment of the $4 dividend in any subsequent year.

So long as there shall be any accumulated dividends on the new preferred stock, no distribution whatever, whether by dividends or otherwise, shall be declared, or set aside for payment, or paid upon the common stock of the Atlantic Coast Line Railroad Company, and no common stock of the Atlantic Coast Line Railroad Company shall be purchased or redeemed.

The new preferred stock shall be redeemable as a whole or in part by lot, at any time on at least 30 days' notice at $100 a share plus (1) the amount of

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any accumulated dividends within the limit of accumulation herein specified and (2) an amount equal to interest at 4 percent per annum from the last preceding dividend-payment date to the date of redemption.

The new preferred stock shall be convertible into Atlantic Coast Line Railroad Company common stock share for share (except as hereinafter in this paragraph provided) and shall contain suitable provisions to protect against any dilution of the conversion rights. In the event of the election of the Atlantic Coast Line Railroad Company to redeem any or all of the new preferred stock, any holder of any of the shares thereof called for redemption shall have the right to convert any or all of such shares into common stock at any time prior to the date when the redemption shall become effective, but in conversions made after the election of the company to redeem and prior to the date when the redemption shall become effective the basis of exchange shall be 1 share of preferred stock for 1¼ shares of common stock.

Holders of the new preferred stock shall be entitled to one vote per share in the election of directors of the Atlantic Coast Line Railroad Company and otherwise except as provided in this paragraph. The holders of the new preferred stock voting as a class shall have the right to elect not less than two directors in the event of the default of the equivalent of six quarterly dividends. The Atlantic Coast Line Railroad Company shall not, without the consent or vote of the holders of at least two-thirds in par value of the outstanding new preferred stock, create any stock ranking, either as to assets or dividends, in priority to or on a parity with the new preferred stock. The affirmative approval of the holders of at least two-thirds of the new preferred stock shall be a prerequisite to any charter or bylaw amendment of the Atlantic Coast Line Railroad Company altering materially any existing provision of such preferred stock.

In the event of the dissolution, winding up, liquidation, or reorganization of the Atlantic Coast Line Railroad Company, the holders of the new preferred stock shall be entitled to receive the par value of their shares and accumulated dividends (within the maximum herein specified) before any distribution shall be made to the holders of Atlantic Coast Line Railroad common stock and shall not be entitled to share further in any assets of the Atlantic Coast Line Railroad Company.

XII. NEW COMMON STOCK

The common stock issuable in the reorganization shall be the common stock of the Atlantic Coast Line Railroad Company outstanding on the consummation date, or the equivalent thereof in event of any stock dividends, split-ups or the issuance of any rights subsequent to the consummation date.

XIII. DETERMINATION AND APPLICATION OF AVAILABLE NET INCOME

Available net income of the Atlantic Coast Line Railroad Company for the purposes of this plan shall be determined for each calendar year beginning with the date of consummation. For each year ended after the consummation of the plan the determination shall be made on or before May 1 of the following year. If the plan is consummated on a day other than January 1, the available net income shall be determined for the period from the date of consummation to December 31 of the same calendar year. The determination of available net income in that event shall be made on or before May 1 of the following calendar year, and the interest and sinking fund payments for that period shall be one-twelfth of the corresponding amounts for a 12-month calendar-year period for each month, or major fraction thereof, elapsing between the date of consummation and December 31 of the same year.

Available net income for each year shall be determined by deducting all fixed charges of the Atlantic Coast Line Railroad Company (including the sinking fund payment for retirement of the new divisional first mortgage bonds) accruing in such year from the Atlantic Coast Line Railroad Company's balance available for fixed charges for such year (determined in accordance with this Commission's accounting rules or those of any other governmental agency having jurisdiction in the premises at the time in effect, or, to the extent not governed by such accounting rules, in accordance with sound accounting practices).

Available net income shall be determined for each year as the accounts are stated on the books of the Atlantic Coast Line Railroad Company when its accounts are closed for such period, without adjustments, except that (1) if in respect to any year the available net income is a deficit, the amount of such deficit shall be carried forward and be deducted in determining available net income for the succeeding year or years until such deficit (or accumulated or remaining deficits) be extinguished by earnings, which, in the absence of such deficit or deficits, would be available net income; and (2) any adjustments necessary to correct the income accounts of any prior year shall be made by appropriate entries which may either be made in the accounts of the current year or, in the discretion of the board of directors of the Atlantic Coast Line Railroad Company and subject to the approval of this Commission or that of such other governmental agency, if any, as at the time may have jurisdiction over the accounting practices of the Atlantic Coast Line Railroad Company, may be made, in whole or in part, in the accounts of any subsequent year or years, and any such debits or credits made in the accounts of any year to adjust entries in the income account of prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts; and (3) in computing such available net income, no amounts shall be deducted for retirements of nondepreciable property.

Available net income for each year shall be applied, to the extent necessary, to the following purposes and in the following order:

(*a*) To the payment of currently payable interest on the general income divisional mortgage bonds.

(*b*) To the payment of accumulations of interest on the general income divisional mortgage bonds.

(*c*) To the current sinking fund payment on the general income divisional mortgage bonds.

(*d*) To payments into the sinking fund to the extent of the difference, if any, between the amounts paid in prior years and the amounts which would have been payable if the available net income in prior years had sufficed for payments of $67,500 a year.

Any balance of available net income may be applied by the Atlantic Coast Line Railroad Company for any proper corporate purpose.

The general income divisional mortgage shall specify, or provide for the determination of, an equitable method of ascertaining what portion or portions of the revenues and expenses of any successor or lessee corporation shall be used for the determination and application of available net income under the mortgage in the event of a consolidation, merger, conveyance, or lease involving the Atlantic Coast Line Railroad Company, and the maintenance of a separate income account shall not be required for that purpose.

XIV. TREATMENT OF EXISTING SECURITIES AND CLAIMS

Upon consummation of the plan or prior thereto if the court should order, holders of the debtor's outstanding first-mortgage 4½-percent bonds due June 1,

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1959, shall receive for each $1,000 principal amount, of bonds held, cash in the full principal amount, plus all accrued unpaid interest to the date of payment of the principal.

Subject to the provisions of section IX (A), there shall be distributed ratably in respect of the $45,000,000 of the debtor's first and refunding mortgage bonds cash and securities as follows:

Holders of the debtor's first and refunding mortgage 5-percent, series A, bonds shall receive for each $1,000 bond and all accrued and unpaid interest to the consummation date, (1) $84.89 with respect to the $3,811,000 first-mortgage bonds purchased pursuant to the order of the court dated December 14, 1945 (document No. 507), (2) $300, principal amount, of Atlantic Coast Line Railroad Company divisional first-mortgage fixed interest 3¾-percent 25-year bonds, subject to reduction on account of reservation of bonds for payment in cash of court-imposed liens or for distribution to unsecured creditors, (3) $300, principal amount, of Atlantic Coast Line Railroad Company general income divisional-mortgage 4¼-percent 75-year bonds, (4) $200, par value, of Atlantic Coast Line Railroad Company participating cumulative convertible, $100 par value, 4-percent dividend preferred stock, (5) approximately 1⅛ shares of Atlantic Coast Line Railroad Company no-par common stock (stated at $100 per share), subject to reduction to permit distribution of such stock to unsecured creditors, and (6) a cash payment representing their shares of the cash available under the method of computation outlined in sections VII and IX (A) hereof. The amount of first-mortgage bonds and common stock distributable to the holder of each bond will vary slightly, depending on the method of settlement approved by the court for the unsecured creditors, the cash available for distribution, and the amount of liens imposed by the court upon cash used for improvements to the property.

The $3,811,000 of the debtor's 4½-percent first-mortgage bonds purchased by the debtor's trustees under authority of court order contained on document No. 507 and held in trust by the successor trustees under the first and refunding mortgage shall be paid in cash at the consummation of the plan or earlier if so ordered by the court. When so paid the interests of the holders of the debtor's first and refunding bonds in these bonds are found not to be materially and adversely affected by the plan.

The court shall determine the amounts of the unsecured claims, including the amount of the deficiency claim of the successor trustees of the debtor's first and refunding mortgage, and shall also determine whether any of the unsecured claims should be subordinated.

The court shall determine what items of property, other than those described as free of liens in the accompanying report, are free of liens and shall value them. The value of the property heretofore determined to be free of liens, as described in the report, has a value of $1,177,356 for the purpose of this proceeding. To this amount should be added the values as determined by the court of additional items of property determined by the court to be free of liens. The court shall also determine which, if any, of the claims of unsecured creditors shall not participate in the distribution of free assets or shall be subordinated to other claims.

New securities shall be allotted to the free assets on the basis of 50 percent of the value found for the free assets, in Atlantic Coast Line Railroad Company divisional first-mortgage fixed interest 3¾-percent 25-year bonds at par, and as to the remainder of such value in an amount in stated value of Atlantic Coast Line Railroad Company no-par common stock equal to 60 percent of one-half

the value of the free assets, such securities to be for pro rata distribution among the holders of unsecured claims.

Nothing herein shall be construed to bar a settlement and disposition of the unsecured claims totaling $148,488.71 referred to in the order of the court dated December 13, 1949 (court document No. 805), for not more than 24.64 cents in cash for each dollar of principal amount.

In connection with the distribution of new securities to the unsecured creditors, where the new bonds so distributable to a single creditor or for any portion of the claim of a single creditor would be less than $100, face value, or the stock would be less than 1 share, the total of all the securities which otherwise would be so distributed in such fractional lots shall be delivered to the reorganization managers to be sold by them at either private or public sale and the cash proceeds distributed pro rata on the basis of the securities which each would have received. Allotted securities representing the share in the free assets of creditors electing to receive cash under the stipulation referred to in the report shall be delivered to the reorganization managers for distribution to the first and refunding bond holders.

On the basis of the foregoing, the court shall determine the participation of the unsecured creditors under the plan.

The interests and equities of the holders of the capital stock of the debtor are without value and nothing shall be distributed to them in the reorganization.

The Atlantic Coast Line Railroad Company in connection with any settlement of transportation accounts between the United States and the debtor, shall be required to recognize and pay or allow for any and all sums determined through audit, adjustment, compromise, or litigation, as due the United States by virtue of the provisions of section 322 of the Transportation Act of 1940, 54 Stat. L. 955, for payments made prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this reorganization proceeding and without prejudice by reason of such sums not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtor.

XV. CLAIMS NOT AFFECTED BY THE PLAN

The following claims to the extent allowed are not affected by the plan: (*a*) Claims arising from the administration of the trust estate and operation of the property subsequent to the filing of the petition under section 77 of the Bankruptcy Act, as amended, on January 25, 1941; (*b*) obligations of the receivers incurred in the receivership proceedings between the time of appointment of the receivers on August 31, 1931, and the filing on January 25, 1941, of the petition under section 77 of the Bankruptcy Act, as amended, and reasonable administrative expenses, and allowances in that proceeding, to the extent that provision shall be made therefor by the court in the present proceedings; (*c*) claims entitled to priority over one or more of the mortgages of the debtor, including labor claims entitled to such priority; (*d*) claims for taxes and special assessments; (*e*) claims for interest and principal provision for payment of which has been made by the debtor or by the court, but which have not been paid because not presented for payment. To the extent that such claims, liabilities, or obligations are not paid by the debtor or the trustees of the estate of the debtor pursuant to order of the court in the reorganization proceeding, they shall be assumed by the Atlantic Coast Line Railroad Company and paid in cash in due course, provided that any amounts of the foregoing classes (*a*) to (*e*) inclusive, assumed by the Atlantic Coast Line Railroad Company shall con-

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stitute a charge upon the property securing the new divisional mortgages, such charge to be prior in lien to such new divisional mortgages. All such claims, liabilities, and obligations may be adjusted or compromised and dealt with or paid or discharged by the Atlantic Coast Line Railroad Company, all as may be determined by its board of directors. In view of the above provisions, the interests of the holders of such claims of the foregoing classes (*a*) to (*e*), inclusive, against the debtor will not be materially and adversely affected by the plan.

XVI. EXPENSES OF REORGANIZATION

All costs of administration of the trustees of the debtor and all expenses of reorganization, including the amounts of all claims for compensation and expenses allowed pursuant to section 77 of the Bankruptcy Act, shall be paid in cash.

XVII. ASSUMPTION OR DISAFFIRMANCE OF LEASES OR CONTRACTS

The Atlantic Coast Line Railroad Company shall assume such of the contracts of the debtor which are executory in whole or in part, including any executory leases and liabilities under guaranties as shall have been affirmed by the trustees of the estate of the debtor in the reorganization proceeding with the approval of the court, and also any executory contracts made by the trustees of the estate of the debtor, with the approval of the court in the reorganization proceeding which, by their terms, do not terminate at the conclusion of the reorganization proceeding. When such contracts are assumed by the Atlantic Coast Line Railroad Company, the interests of the other parties to such contracts will not be materially and adversely affected by the plan.

XVIII. LISTING OF THE NEW SECURITIES ON THE STOCK EXCHANGE

The reorganization managers or the board of directors of the Atlantic Coast Line Railroad Company shall, upon the issuance of the new securities, or if practicable prior thereto, cause the filing promptly of an application for the listing of the new securities on the New York Stock Exchange.

XIX. REORGANIZATION MANAGERS

The reorganization managers shall not be more than three in number, all to be appointed by the court, and shall carry out the plan under the supervision and control of the court. The reorganization managers shall have general supervision of carrying out the plan.

The reorganization managers shall have, subject to any requirements of law and requisite approval of the court and this Commission, fully and plenary discretionary power to take all such action and to enter into such arrangements, financial and otherwise, as they may deem necessary or advisable, in order to consummate and carry into execution the plan or any modification thereof; to fix the compensation of persons whose services they may employ in the execution of their powers; to supervise the transfer of the debtor's properties to the Atlantic Coast Line Railroad Company; to determine the form and provisions, so far as not otherwise herein specifically provided, of the new bonds and the mortgages under which the same shall be issued, the new preferred stock certificates and any other instruments deemed by the reorganization managers to be necessary or proper in connection with the plan; and to do all other acts in their discretion advisable for carrying out the plan. All fees and expenses of the reorganization managers shall be payable out of the estate of the debtor

upon order of the court, within maximum limits to be fixed by this Commission.

The court shall, however, before they are put in use, approve the new mortgages, trust agreements, bonds, securities, and preferred stock certificates.

The reorganization managers may act by a majority as from time to time constituted, at a meeting or in writing without a meeting. They may employ such agents, attorneys, and others as they may deem desirable for the purposes of the plan. They may from time to time delegate to others any power or discretion conferred upon them by the plan, and they shall not be liable for any action taken or omitted by them in good faith or by any person employed by them in good faith, except for their respective individual malfeasance or willful neglect.

The reorganization managers shall not be authorized to solicit deposits of securities for purposes other than exchange or to solicit authorizations to represent security holders, except upon approval by this Commission of the terms of such solicitation, pursuant to section 77 (p) of the Bankruptcy Act.

XX. ACCEPTANCE OF THE PLAN, PARTICIPATION THEREIN AND EXECUTION THEREOF

Acceptance of the plan shall include acceptance of the new bonds, mortgages, stock certificates, and all instruments necessary and appropriate to the carrying out of the plan, to the same effect as though the terms of such instruments were set out in full in the plan.

The method by which creditors and other parties in interest may, after confirmation of the plan by the court, participate therein shall be determined by the reorganization managers, with the approval of the court, and notice thereof duly given.

XXI. NOTICE AND CONSTRUCTION OF PLAN

Unless otherwise provided in section 77 of the Bankruptcy Act, as amended, or by any order or orders of the court in the reorganization proceedings or of this Commission, whenever notice shall be required or permitted to be given under or pursuant to the plan, such notice shall be given by publishing a copy thereof once in each week for two consecutive weeks in one newspaper published and of general circulation in the city of Jacksonville, Fla., and in one newspaper published and of general circulation in the city of Miami, Fla., and also (1) in case of notice to security holders who have accepted the plan, by mailing such notice, postage prepaid, to the addresses of such security holders set forth in the acceptances signed by them, and (2) in case of notices to security holders who shall not have accepted the plan, by mailing such notices, postage prepaid, to such security holders whose names and addresses are available, but failure to mail any such notices, or delay in mailing any such notices, shall not invalidate the notice by publication above provided, which alone shall be held sufficient.

The construction of the plan by the court shall be final and conclusive. The court shall have the power to cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient in order to carry out the plan effectively.

U. S. GOVERNMENT PRINTING OFFICE: 1952

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Objections of First and Refunding Mortgage Trustees and Others, to Plan of Reorganization and Motion to Dismiss Proceedings.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

In this cause come interveners, President and Directors of the Manhattan Company, a New York corporation, and J. Bryson Aird, as successor Trustees under the Debtor's First and Refunding Mortgage and the undersigned persons, firms and corporation, each of whom owns and controls one or more bonds secured thereby, respectfully represent:

I. OBJECTIONS TO 1951 PLAN.

Interveners object to the confirmation of the modified plan of reorganization certified by the Interstate Commerce Commission by its orders of July 12 and October 25, 1951, herein called the "1951 plan", because the same is unfair, inequitable, based upon unlawful standards and findings and contrary to the law of the land for the following reasons:

1. *Consideration reduced below that of the condemned plan.* The only material change which the 1951 Plan makes in the plan previously condemned is to *reduce* the consideration to be paid by the Atlantic Coast Line Railroad Company, herein called "Coast Line", by more than

$2,000,000. The two plans are identical in nature, framework, in the essential provisions of the several Coast Line securities proposed to be issued,[1] and also in both the number and par or stated value of the shares of capital stock, preferred and common, to be issued.

The principal amount of the second mortgage income bonds is increased by $5,625,000 (from $7,875,000 in condemned Plan to $13,500,000 in 1951 Plan) and that of the first mortgage bonds ostensibly by $500,000 (from $13,500,000 to $14,000,000). However, a new provision, for either the elimination of the liens for betterments imposed by the Court prior to 1950 ($4,619,000 as of March 1, 1950)[2] or the reduction of a like amount of first mortgage bonds, has the net effect of reducing the amount of first mortgage bonds by $4,119,000, so that the net increase in total mortgage bonds under the new plan is $1,506,000.[3]

Under the new plan, the cash to be paid by Coast Line, ostensibly $4,000,000, is in fact wholly illusory, inasmuch as exactly the same amount of cash[4] is to be taken by the Coast Line from bondholders' cash. Under the provisions of the former Plan, Coast Line as of this time would be required to pay $4,125,000 to the trustees and the trustees required to pay to Coast Line only $500,000.[5] The result

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[1] Interest rate of first mortgage bonds is increased ¼ of one percent, from 3½ to 3¾ percent.

[2] Fifth Supplemental Report, sheet 78.

[3] Total increase of $6,125,000 in bonds minus $4,119,000 in liens.

[4] $1,000,000 in cash working capital and $3,000,000 for construction in the future of new passenger and freight stations.

[5] Under the former plan, the Coast Line was to be paid only for the *balance* of the reserve "any part of such fund which may not have been expended or appropriated at the date of consummation of the plan" (267 I. C. C. 377). The net amount reserved for additions and betterments other than equipment maturities and the Ft. Pierce cut-off was $5,855,551 and for the Ft. Pierce cut-off $1,170,000, a total of $7,025,511 plus working capital of $500,000 (267 I. C. C. 363). As of December 31, 1949, the Trustees had expended on this program $5,070,512 in capital charges and $3,225,857 in operating charges or a total of $8,296,369; during the first three months of 1950, they spent an additional $568,616 and estimated that they would expend during the remainder of the year 1950 $2,360,508 to complete the rail program (Loftin, Exhibit 304). As of December 31, 1949, therefore, the entire amount reserved in the former plan had been spent by the Trustees for the purposes of the reserve, leaving no balance therein.

of the 1951 plan is to reduce by $3,625,000 the cash to be paid by Coast Line. This amount less the net increase in Second Mortgage Income Bonds ($1,506,000) results in a net over-all *reduction* in the consideration to be paid of $2,119,000.

2. *The 1951 Plan fails to recognize the Rights Vested by the Court's lien orders by providing that the amount thereof be deducted from the first mortgage bonds otherwise issuable by Coast Line to the Bondholders.*

Based upon the statement that "the earnings reflect the savings resulting from new equipment acquired between March, 1945 and July, 1950" the Commission concludes that "our valuation reflects fully the value of these equipment acquisitions" (5th Supplemental Report, Sheet 79). This reasoning is specious. As a matter of fact, if any increase were allowed on account of the liens, it could only have been in second mortgage income bonds for the reason that the first mortgage bonds were increased only by $500,000, the preferred stock and the common stock unchanged, the cash reduced by $3,625,000. Apart from the liens, the increase in bonds was $6,125,000, the reduction in cash $3,625,000, or a net increase of $2,500,000, *all of which was in second mortgage income bonds. This is all that could have been allowed for the liens.* Certainly this is not the "equitable equivalent" or "quid pro quo" of a lien fixed by the Court as superior to all liens except the present first mortgage.

As will be shown in a later connection, the finding with respect to "normal earning power" so far from taking into effect the increased earnings due to the equipment fails by several hundred thousand dollars, to reflect average earnings of the debtor during the past five years.

The Court found that the purpose for which the expenditures secured by these liens was to improve the earning power of the debtor's estate. The Court would have been

warranted under such circumstances in authorizing the issuance of Trustees' certificates and if these certificates had been issued, they would have constituted a prior lien on all funds and property in the hands of the Trustees and superior even to the rights of the refunding mortgage. The Court very properly found that this was unnecessary in view of the large amount of cash on hand. In this respect, therefore, these liens resemble and should have been treated by the Commission as possessing the attributes of Trustees' certificates instead of being subordinated to and confused with secondary claims.

In addition to authorizing the expenditures covered by the foregoing liens, this Court, either with the consent of the bondholders, or without any objection by them, during the course of the bankruptcy and the receivership proceedings at times before Coast Line had indicated any intention or desire to intervene herein, has authorized the trustees to expend many millions of dollars for the extension, improvement, additions and betterments to the property. These expenditures were authorized by the Court and consented to by the bondholders in the belief that they would improve and better the property of which the bondholders would ultimately become the legal as well as the equitable owners. The Plan, by divesting the bondholders of the mortgaged property, would take from them their right to recoup from the mortgaged property the benefits flowing from the expenditures of these large amounts of their funds.

3. *The 1951 Plan would expropriate Bondholders' cash of $4,000,000, which The Plan Unlawfully Transfers to Coast Line for the purpose of:*

(1) constructing, in the future, passenger and freight stations ($3,000,000) for the Coast Line; and (2) providing Coast Line's treasury with additional working capital ($1,000,000).

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The proposed station construction was a part of a future four year building program prepared by trustees at Coast Line's request. Except as might otherwise be required by order of this Court, "it is not the intention of the trustees at the present time to build any stations." (Loftin, Tr. 5531), although preliminary plans have been made respecting the Miami Station. None of these improvements were assumed to be completed in the appraisal of the physical or earning values of the property.[6] These improvements are in no sense routine renewals, nor are they "essential to the continued operation of the railroad."[7] The claimed urgency, at least for some of them, is to "improve the company's earning power."[8]

The present plan increases the amount of cash to be expropriated and paid into Coast Line treasury as working capital from $500,000 to $1,000,000. If this were a real reorganization where the debtor or its successor continues in operation as a going concern, provision of cash working capital would be proper. Here Debtor is to be completely liquidated, its corporate and personnel organization destroyed, and its property transferred to another wholly alien corporation for exclusive operation by the latter as an integral part of the latter's property, at prices less than the junk value of its physical property, $48,460,168.[9]

There is no authority to warrant such a confiscation of Bondholders' cash for either of these purposes.

4. *If the 1951 plan be viewed as one of reorganization rather than one for a liquidating sale, it, contrary to the 5th Amendment, would contravene the Absolute Priority*

[6] Fifth Supplemental Report, Sheet 51.

[7] Lackawanna Iron, etc. v. Farmers' Trust Co., 176 U. S. 295; Southern Ry. v. Carnegie Steel Co., 176 U. S. 255.

[8] Fifth Supplemental Report, Sheet 83.

[9] Frohman, Exhibit 461.

Rule of the Federal Courts by releasing, without payment of the mortgage debt, the lien of the refunding mortgage, in order to vest the property, free of such lien, in the holder of a junior claim.

Coast Line's status in this proceeding is that of an assignee of all or part of an unsecured claim filed by the stockholders, admittedly junior to the debt of about $90,000,000 secured by the refunding mortgage. The plan provides that:

(1) The mortgaged property be *"vested"* in Coast Line;

(2) Lien of refunding mortgage be "discharged, void and unenforceable";

(3) The mortgage debt be cut in half through the device of an administrative appraisal, based largely upon representations of Coast Line;[10]

(4) This "appraised value" be paid senior creditors, not in cash but in speculative securities of the junior creditor;

(5) Senior creditors be denied all other rights for the "protection and the realization by them of the value of their equity"[11] including the right to a judicial foreclosure sale at which they may bid the debt for the property.[12]

5. *The 1951 Plan is Based upon an Unlawful Standard of Value.*

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10 Preble Corp. v. Wentworth, 84 Fed. 2d. 73; Tennessee Publishing Co., 299 U. S. 18, 81 L. Ed. 13.

11 Consolidated Rock Products v. DuBois, 312 U. S. 510.

12 Louisville Joint Stock Land v. Radford, 295 U. S. 555; Tennessee Publishing Co. v. American Nat'l. Bank, 299 U. S. 18, 81 L. Ed. 13; Francisco Building Corp. Ltd. v. Battson, 83 Fed. 2d. 93; Security-First Nat'l. Bank v. Rindge Land and Navigation Co., 85 Fed. 2d. 557; Texas Hotel Securities Corp. v. Waco Development Co., 87 Fed. 2d. 395.

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The Commission, upon request, found that refunding bondholders "are the equitable owners of the property" whose title, however, is subject to divestment, without sale, in the reorganization proceeding. In providing for such divestment, it rejected as unworthy of "any appreciable weight" the fair market value of the physical assets comprising the property, as evidenced by the investment, original cost, or original cost less depreciation and even the junk value thereof, asserting that the sole and controlling criterion was earning value.[18]

In the determination of the permissible capitalization or in the marshalling of conflicting liens in a reorganization proceeding, the earning value is and should be the controlling criterion. But the 1951 Plan is in no true sense a plan of reorganization. It is one for the complete liquidation of the Debtor and the transfer of all its property upon an appraisal and without sale or bidding to one who is at the most a junior creditor and at the least a covetous stranger. Under such circumstances, the Coast Line is in no better position than the government would be should it undertake either to condemn the railroad or to limit its rates to less than a fair and reasonable return upon its investment. The owners of the property are therefore entitled to its *fair market value* according to the standards required by the Fifth Amendment.

6. *The 1951 Plan Unlawfully and Arbitrarily Understates the Earning Power of Debtor.*

The Debtor's income available for return in a "normal year" is appraised by the Commission at $2,300,000. This amount is only $150,000 above that estimated by the putative purchaser. The average earnings for the past five years as adjusted by the Commission (Document 938, p. 163) are $2,520,688. In appraising the Coast Line average earnings, the three last years then available were used

[18] Document 938, page 207.

because "the results for the year 1946 were not included with these years because the Coast Line regarded those results too much affected by post war adjustments." (Document 938, p. 201)[14]

If the Commission had used the same basis in appraising the Debtor's earnings as it used in appraising the Coast Line earnings, the average earnings would have been $2,500,000 instead of $2,300,000. The Commission found that there were savings in personnel expense which would occur as a result of an internal reorganization of approximately a little less than $100,000.[15]

The Commission, in appraising the earnings of the Debtor for the period 1946 to 1950 made an adjustment for the interim increase in mail pay. Subsequent to the Sixth Supplemental Report the Commission made its final order in the Mail Pay Case, which will have the effect of increasing the earnings of the Debtor by an additional $100,000 per year. Due to these errors, even on the basis used by the Commission, the earnings are understated by at least $400,000 per year. This appraisal was made ostensibly to fix the "maximum permissible capitalization" of a "hypothetical" internal reorganization although the plan contemplated none. Having in mind the extreme conservatism with which permissible capitalizations are made, the appraisal, while low, is not wholly indefensible for that limited purpose.

In reality, however, the only use, if not purpose, of this estimate was in fixing a value of the mortgaged assets to

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[14] The earnings for the Coast Line in 1946 which, after the rail adjustment made by the Commission, were $6,016,000 which was about half the average for the three years 1947 to 1949 ($13,198,000).

[15] At Sheet 192 of Document 938, the Commission found that of the non-dependent savings of $135,983 designated by the witness McWilliams as savings which would be made in the case of an internal reorganization as well as in the case of merger by the Coast Line, 25% should be "credited to integration". This would leave 75% or approximately $100,000 of savings which would result in an internal reorganization. This amount of savings was ignored by the Commission both in appraising the savings under integration and in ascertaining the future income of the Debtor.

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be divested out of the bondholders into Coast Line. For such a purpose, the estimate is highly arbitrary and confiscatory. In the fixing of such a value, the bondholders are entitled to a realistic appraisal of all the circumstances which are likely to affect future earnings of the debtor, as well as its past earning history.

The Commission's appraisal is less than three-fifths of the average earnings over the past 15 years,[16] one-half the average over the past 10 years[17] and about three fourths those over the past 5 years.[18] In the past four years Debtor's earnings have been greatly depleted by huge passenger deficits. In and prior to 1946, it had been able to about break even in passenger service, but during the past three years, these deficits have averaged well over $3,000,000 per year. In 1949, the passenger deficit amounted to $3,659,000 (Tr. 3446). Had it not been for these deficits, Debtor's earnings over the past several years would have exceeded $6,000,000 or two and one-half times the amount of the Commission's appraisal.

In addition to these facts there was brought to the attention of the Commission a method whereby these passenger deficits could be reduced substantially by consolidation of the head-end traffics. This proposal was brushed aside with the statement: "We conclude that the proposal * * * is not sufficiently developed of record to permit us to consider in connection with our estimates of Debtor's future earnings that the proposed economies are reasonably possible of realization". The trustees have under active study and consideration plans respecting further dieselization and economies in connection with passenger train service which the bondholders believe should further increase the earnings of the Debtor by more than one million dollars per year. Debtor's growth of traffic is greater than any of its

[16] $3,895,000.

[17] $5,324,000.

[18] $2,520,688 as adjusted by the Commission (Document 938, p. 163).

immediate connections which are the three principal southern railroads, Coast Line, Seaboard and Southern. Its increase in freight revenue per mile of road in the post-war period has been twice that of Coast Line and substantially greater than that of either Seaboard of Southern. The territory which it serves is one of the most rapidly growing and developing, commercially and industrially, in the country. The very fact that these elements are necessarily speculative stresses the inherent inequity of depriving an owner of his property by administrative appraisal. The earning power of Debtor is not less than $5,000,000 per year.

7. *The 1951 Plan Unlawfully Provides for the Taking of Bondholders' Property for a Grossly Inadequate Consideration.* The plan provides a consideration of $42,500,000 in par amount of Coast Line stock and bonds, having a market value said to be $39,694,000.[19] The clearest statement of the finding as to the value of the property taken is found at Sheet 96 of the Fifth Supplemental Report (Document 938, page 242), where, in response to a specific request, it is stated:

> "The fair value of the assets subject to the first and refunding mortgage bonds and subject to the equipment liens of $5,314,000 we have found to be approximately $51,314,000."

Upon this basis, the value of the equity in the assets, after deduction of the equipment obligations, is $46,000,000. This would produce a deficit in the consideration of nearly $7,000,000 upon the face of the Report. However, the Sixth Supplemental Report attempts to explain this incongruity by stating:

> "Our * * * determination of the * * * value of the debtor's property * * * was in Coast Line securities." (Sheet 5)

[19] Document 938, p. 218, less cash of $4,000,000 to be paid by Coast Line which is offset by the payment of a like sum in cash to it.

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This is a roundabout way of finding that the bondholders' equity was worth only $39,694,000. This amount is about one-half the physical value[20] and far less than the junk value of the salvageable materials.

Use of the ratemaking value is justified by the demonstrated earning power of the property. The rate of return of all class I railroads of the country upon their ratemaking value has averaged about 4% during the past 25 years. For Debtor to earn at this rate upon its physical value would require earnings of $3,000,000 per year. There has been no year in the last ten in which the freight service of the company has not produced earnings far greater than that amount, and as heretofore shown, Debtor's earnings, after *deducting passenger losses averaging* $3,000,000 per year, have averaged above that amount.

Taking into account the tremendous potential growth of the territory served by Debtor, its magnificent physical condition, the fact that it has been completely rehabilitated during the past few years, and the actual record of net earnings while in bankruptcy, the tremendous possibilities of increasing net earnings by the reduction in passenger deficits, there is no sound basis for appraising the property at less than its rate-making value. The fair market value of the mortgaged assets is not less than $75,000,000.

No one is forcing Coast Line to take these assets. Indeed no one but the Coast Line and a majority of the Commission desires that it do so. Under such circumstances, there is no reason why it should be permitted to seize them at distress prices.

Coast Line urges that the proper criterion in considering the fairness and equity of the plan was the speculated prices on a non-existent market of the hypothetical issues of an unorganized successor corporation to the Debtor. While the Commission ostensibly rejected this criterion as

[20] Investment $78,000,000; original cost, $91,000,000; reproduction cost less depreciation, $76,000,000.

not giving "a just and reasonable result",[21] in its attempt to justify the fairness of its plan it applied much the same test. Thus it somewhat grudgingly admits that the first mortgage bonds under the St. Joe plan would be worth par and that "the evidence shows that the St. Joe Company witnesses believe that under the St. Joe Company plan there would not be any free market in the stock and that it would be worth, at least to the St. Joe Company, as much as the bonds",[21] from which it necessarily followed that the securities under the St. Joe plan would be worth at least $45,000,000. Despite this admission, it sets up a "theoretical" capital structure of a hypothetical company, prices the securities which it assumes would be issued and finds that their aggregate market value would be less than those of the Coast Line securities. This is nothing more nor less than holding that the plan is fair to the refunding bondholders because it will give them more than they would receive under some other plan of reorganization. Such a procedure has been expressly condemned by the Supreme Court.[22]

8. *The 1951 Plan Arbitrarily Transfers to Coast Line the Right of Refunding Bondholders to Recoup their Unpaid Claims out of Debtor's Earnings in Future Prosperous Years.* Under the plan, Coast Line has a fixed obligation to pay the bondholders about $525,000 per year, or $12.00 per refunding bond. In years in which earnings warrant it, it would pay in addition $575,000 in contingent interest,

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[21] Document 938, p. 213.

[22] In *Case* v. *Los Angeles Lumber Company*, 308 U. S. 107, it was said:

> "The fact that bondholders might fare worse as a result of a foreclosure and liquidation than they would by taking a Debtor's plan * * * can have no relevant bearing on whether a proposed plan is fair and equitable * * *. Submission to coercion is not the application of 'fair and equitable standards.' To hold that * * * creditors of a hopelessly insolvent Debtor may be forced to share the already insufficient assets with stockholders because apart from rehabilitation * * * they would suffer a worse fate would disregard the standards of 'fair and equitable' * * *."

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$360,000 in preferred and $240,000 in common dividends or a total of about $1,700,000 or $38.00 per bond. In a year of "normal earnings" for Debtor, the net income *after* income taxes at the normal rate (38%)[23] Coast Line would take from operation of Debtor's property $3.00 per bond ($145,000) more than it would pay the bondholders. In a year equal to the average of the past 37 years, it would take $7.00; of the past 15 years, $23.00; of the past 5 years, $13.00; and of the past 10 years, it would take $48.00, or one and one-fourth times as much as the owners of the property. In addition, it would receive the entire benefits of any "savings" resulting from the merger. These simple calculations not only reveal how unfair and inequitable is the 1951 plan, but also show that *no* plan to divest the owners of their security can be devised which will fairly and equitably evaluate this admitted right of the owners of the property, if for no other reason than because of the demonstrated power of the debtor to make tremendous earnings in abnormally good years. The *only* way in which this right to recoup can be preserved is the legal and equitable method of reorganizing the debtor for the benefit of the creditors as contemplated by the law.

9. *Unlawful Standards of Public Interest.*

The Commission's Report (Document 938, p. 176) states that "the issue before us is whether the public interest will be better served by continuation of the F. E. C. as a stub-end railroad but under the control of the duPont interests or by its integration into a large railroad system." Following this statement, there is an elaborate statement of generalities which in so far as they relate to this proceeding are without factual support in the record from which it is concluded (p. 181) "that it has been a sound policy to con-

[23] The above calculations would not be greatly affected even if it be assumed that the present war tax rates continue indefinitely—Coast Line would about break even at the normal rate, gain about $2 per bond at the 37-year rate; $15 at the rate of past 15 years; $7 past 5 years; and $34 over the past 10 years.

solidate railroads end to end for the purpose of adequately serving the public interest." In a later connection, we will consider the factual fallacy underlying this conclusion. There is no provision in the Bankruptcy Act which provides that in reorganization the Commission shall consider a national policy if there was such a policy to consolidate the railroads of the country. Except by the mischance of inapt phraseology, there is not anything in the Act that would warrant that matter to be considered at all. On the other hand, there is no such national policy.

During the first twenty years after the Northern Securities case, railroad consolidations were deemed to be prohibited in large measure by the anti-trust laws. The Transportation Act of 1920 for the first time authorized voluntary consolidations contrary to the provision of the Clayton and Sherman Acts, provided they were approved by the Commission as consistent with the public interest in accordance with an over-all national consolidation plan. Congress consistently refused to give the Commission the right to compel compulsory consolidation and in 1940, it repealed the Act providing for a national system of consolidations and left only provisions for voluntary consolidations in certain restricted cases. To say that in a bankruptcy case, *the* issue before the Commission in formulating a plan is to determine whether it is better for the public that the Debtor's property be consolidated with another carrier is to add something by administrative fiat which no law of the Congress has ever authorized. As a result of this improper and unlawful standard in the determination of public interest, the Commission's plan subordinates the rights of the creditors entirely to a "supposed" public national policy of consolidation which does not exist. As a result of this fundamental error, the Commission subordinated the issue of whether or not an internal reorganization was compatible with the public interest, an issue which the creditors of the Debtor were entitled to have considered

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independently of extraneous considerations, to a supposed superior public interest for a merger of the Debtor with the Atlantic Coast Line contrary to the explicit finding of the Court of Appeals in this case. There is no provision of Federal law which makes that an issue in this proceeding. If the Commission has the implied power under the Bankruptcy Act, which we deny, that power can be exercised only when the public interest affirmatively requires the merger in order to preserve adequate transportation facilities. No such claim is here made. Further, there is no claim that there has been or will be any inadequacy in transportation service under independent operation of the Debtor's property.

10. *The 1951 Plan is based upon an arbitrary underestimation of the present and prospective earning power of the Debtor.*

The Report states[24] contrary to the undisputed evidence, that the Debtor has been unable to cope with cycles of changes in the volume of traffic; that it is particularly vulnerable to truck competition; that the neighboring trunk line roads have a better balanced traffic, a more stable flow of business, and that it is unable to meet the competition of a parallel trunk line; that it is akin to a secondary main line or a major branch line of one of these larger systems, and that its operations have been less remunerative; and that finally, as a stub end railroad, it does not have sufficient earning power for successful operations. None of these statements is supported by a scintilla of evidence in the record, and each of them is untrue.

Since the abandonment of the Key West extension in 1935, there has never been a year in which the Debtor did not operate at a substantial profit. It is incomprehensible that the statement that the Debtor is comparable to a branch line of the neighboring "trunk lines" could have been

[24] Sheets 176 and 177 of Fifth Supplemental Report.

made by anyone who had the slightest exposure to the record in this proceeding. During the 5 years, 1946 to 1950, the average revenue per mile of road of the Debtor was twice that of the Coast Line; one and one-half times that of the Seaboard; and a third greater than that of the Southern. Its passenger revenues per mile of road during this period were three times as great as those of either the Coast Line, the Seaboard or the Southern, and *greater than all three of them combined.* Freight revenues per mile of road of the Debtor were about the same as the Southern, 65% greater than those of the Coast Line, and 25% greater than those of the Seaboard. Its freight revenue per mile of road was 25% greater than the *total* revenue, freight and passenger, of the Coast Line. During the 10 years from 1939 to 1949, the Debtor's tonnage was two and one-half times as great in the last year as it was in the first; that of the Coast Line less than twice; the Seaboard slightly over twice; and the Southern about one and one-half times. So far as traffic, tonnage or revenue is concerned, "the branch line theory," advanced for the first time in this proceeding in the Fifth Supplemental Report, is nothing short of preposterous, coming as it does from a body of reputed transportation experts.

The same thing is true to an even greater degree with respect to the findings of efficiency and economy. An overall measure of the relative strength and efficiency of carrier operations under the same rate structure is the operating ratio of the freight and passenger services. In the 4-year period, 1946 to 1949, the freight operating ratio of the debtor was lower than that of either the Coast Line, the Southern or the Seaboard, being nearly 10 percentage points (78.9% compared with 88.6%)[23] lower than that of the Coast Line. Its passenger expense ratio for the same

[23] In terms of Debtor's average freight revenue, about 16 million dollars, this one factor would produce over 1½ million dollars more net revenue under independent operation than under Coast Line!

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period was 123% which was slightly lower than that of any of the other three carriers. Its transportation ratio was also lower, being 3.8 percentage points or 10% lower than that of Coast Line. Its ratio of wage expense was lower and its freight car miles per operating employee greater than either of the other three trunk lines. It spent $900 per equated track mile more for maintenance of way than did the Coast Line; $700 more than the Seaboard; and $500 more than the Southern. The same conditions prevailed throughout the period from 1936 to date.

The statement that Debtor does not have earning power sufficient for successful operations is also demonstrated to be untrue by the uncontradicted evidence of record. In every year since the abandonment of the Key West extension, the debtor has fully earned interest upon its first mortgage and in all but two of those years, (in each of which it lacked doing so by less than $60,000) its earnings would have been sufficient to pay interest at current rates upon a bond issue of $20,000,000 as proposed by Bondholders. Over the past 15 years, it has earned 4% interest upon this amount more than three times over. On the contrary, Coast Line on its own operations has failed to earn its *present* fixed charges (before income taxes) in 9 out of the last 20 years, two of them being 1946 and 1947. It was able to pay these charges only because of the dividends upon the L. & N. stock, a free asset in its treasury, which it is at liberty to dispose of whenever its cash position further deteriorates.

11. *The 1951 Plan is Unjust, Unfair and Inequitable in the Allocation of the "Savings" Claimed to be Possible as a Result of the Merger.*

Coast Line's claim that it would be able, through elimination of employees, to save approximately $1,558,000 per year was based upon "over-all judgment factors" and the assumption that the additional volume of work could be

handled at a lesser unit cost. Witnesses for the bondholders challenged these estimates as being based upon unsound premises. From a detailed analysis, they found that the maximum saving would be approximately $386,000 per year. The Commission made a general over-all appraisal of $925,000. It further found that half of these savings should be credited to the refunding bondholders and that this particular income should be capitalized at 6.3%. $462,500 per year capitalized at this rate would produce approximately $7,345,000. However, the Commission found that the value of Debtor's property *"in terms of Coast Line securities"* (and cash) and including half of the prospective savings, is $46,500,000[26] plus outstanding equipment obligations. It, from this latter amount, this capital value of one-half of the savings is deducted, there remains only $39,155,000 for the physical properties, exclusive of savings and equipment obligations. This amount is $6,845,000 less than the "fair value of the assets", belonging to the refunding bondholders as found by the Commission ($46,000,000) and $1,345,000 less than the value ($40,500,000) found by the Commission in the previous Third and Fourth Supplemental Reports.

This claim of so-called operating economies was deemed by both Coast Line and the Commission to be indispensable to justify the divestment of the property out of the bondholders and into the Coast Line. Having served that purpose, in the eyes of its proponents, the effort to minimize the inexorable conclusion that additional value therefor must be allowed to the bondholders is palpably and unlawfully specious. If the assets were worth $46,000,000, and if there were annual savings of $462,500 to which the bondholders were entitled, and if a fair rate of capitalization is 6.3%, all as expressly found by the Commission, then manifestly, the plan is unfair and inequitable upon its face, in fixing

[26] Plus equipment obligations.

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the total ostensible consideration at $46,500,000, and the actual consideration at less than 40 million dollars.

12. *The 1951 plan is based upon the arbitrary and erroneous finding that it would be incompatible with the public interest for a plan substantially similar to the so-called St. Joe Company plan to be approved.*

13. *The plan is unfair and inequitable to minority bondholders.* As in the former plan which was condemned by the Court in part for this reason, the present plan denies the bondholders other than the St. Joe Paper Company the right to realization upon the security for their claims and requires them against their will to give up their equitable rights in the property and take in exchange therefor securities of the Coast Line which they do not desire to have, all because of the finding that the holding of the majority of the common stock by the St. Joe Paper Company would be incompatible with the public interest.

Wholly apart from the fact that the finding of incompatibility is without basis in the record, the injustice and unfairness to the minority bondholders is clear. If there is any compelling public reason why the St. Joe Paper Company may not lawfully exercise control of the debtor, the minority bondholders should not be thus penalized as a consequence. There are other ways, as Judge Sibley suggested, by which such an end could be achieved without imposing such an unfair result upon the minority bondholders.[27]

The only reason given by the Commission for not adopting the remedy suggested by Judge Sibley is that the "voting trust" would have to be for an indefinite period, whereas the voting trust approved by the Commission and Courts in other reorganization plans have been relatively for short periods and for different purposes. Furthermore

[27] 81 F. Supp. 926, 933.

the Commission, under similar conditions, and to prevent a control held by it to be contrary to the public interest, has required railroad stock to be trusteed for periods of time sufficient to prevent any consequent injury to the public.

14. *The 1951 Plan is Unlawful* in that it is based upon the finding that "the interest of the railroad employees affected by the merger will be adequately protected", which finding is not supported by any substantial evidence and is contrary to the overwhelming preponderance of the evidence which is to the effect that hundreds of employees of the Debtor will be discharged or demoted or compelled to move their homes and families at great financial loss and unnecessary personal distress and suffering.

15. *The 1951 Plan is Unlawful in that it is Based upon the Finding* that "its consummation would not result in the disruption of routes of channels of trade and commerce between points on the lines of the Debtor and points north of Jacksonville" which finding is not supported by any substantial evidence and is contrary to the overwhelming weight of the evidence.

16. *The 1951 Plan is Unlawful in that it is Based upon the Finding* without substantial evidence and contrary to the overwhelming weight of the evidence which is to the effect that merger of the Debtor's property into the Coast Line would not adversely affect and impair the transportation service to, nor impair the proper development of, the communities and territories served by said Debtor's lines, all of which was found to be established by the hearing Examiner who heard the witnesses and whose findings with respect thereto were arbitrarily and unwarrantedly ignored and disregarded by the Commission.

17. *The 1951 Plan is Unlawful Because* (1) it does not afford due recognition of the rights of the Refunding bondholders but unlawfully subordinates such rights to the

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interest of the Coast Line; (2) it requires a merger of the debtor into a non-affiliated railroad forcibly and against the will of the vast majority, if not all, of the equitable owners of the property; (3) it provides for unification of the debtor into the Coast Line contrary to the provisions of the Interstate Commerce Act; (4) it provides for the taking of the property of the bondholders and the vesting of it in a stranger without authority of law and without payment of just compensation therefor, contrary to the provisions of the Fifth Amendment; and (5) it unlawfully impairs and hinders the enforcement by the bondholders of their claims as creditors of the Debtor.

II. Motion for Dismissal of Proceeding.

Interveners further move the Court to enter an order dismissing the proceeding and transferring the property to the equity receivers in Docket No. 757-Equity,[28] because it is obvious from the record that a resubmission to the Interstate Commerce Commission would serve no useful purpose and would produce nothing but further futile and unwarranted delay to affording to the bondholders the relief to which as debtors they are entitled, and for cause show:

Prior to 1941, the property of the debtor was in mortgage foreclosure receivership in this Court for about 10 years. In January of the year last mentioned, a bankruptcy petition was filed for the purpose of expediting the reorganization. On April 6, 1942, the Commission approved a plan for the internal reorganization of the debtor. This plan was disapproved by the Court and referred back to the Commission to remove certain inequities and deficiencies pointed out by the Court. On January 8, 1945, the Commission approved a revised plan of internal reorganization, and its report disapproved a plan of reorganization

[28] *Bankers Trust Co., et al., as Trustees, Plaintiffs, v. Florida East Coast Railway Company, a corporation, Defendant.*

under the control of Coast Line. Thereafter, upon petitions to modify this plan filed by the Coast Line and "United States Senators Claude Pepper and Charles O. Andrews and United States Representatives J. Hardin Peterson and Joe Hendricks," the proceeding was again reopened on July 20, 1945, to permit the filing and the taking of testimony upon a plan of reorganization involving transfer of the property to the Coast Line.

On April 8, 1947, in its Third Supplemental Report, the Commission set aside the plan of internal reorganization which it had approved in January 1945, and approved in lieu thereof the plan of reorganization proposed by Coast Line, with certain immaterial modifications. Approximately a year later, on March 25, 1945, in its Fourth Supplemental Report, by a closely divided vote, the Commission affirmed, approved and certified the last described plan.

Upon objections being made, the District Court and, upon appeal, the Court of Appeals, refused to confirm the plan so certified and referred the proceeding back to the Commission. In the opinion of the Court of Appeals, the Commission and the parties were admonished to the end that consideration should be given to the making of a fair and equitable plan rather than the determination of who was to control the Debtor's property. This admonition has been disregarded by the Commission in its Fifth and Sixth Supplemental Reports now before the Court, since a large part of the reports of the majority is devoted to the justification of their action in providing that the property be turned over to Coast Line. The result is that the plan which was finally certified is identical, to all intents and purposes, with the condemned plan, except that even greater injustice would be heaped upon the bondholders.

The refunding bondholders, with few if any exceptions, have been ready, willing and able to accept a reasonable plan of internal reorganization which will give them the benefit of their legal and equitable rights.

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Objections of First and Refunding Mortgage Trustees and Others, etc.

The undersigned bondholders, in collaboration with the Trustees of the first and refunding bonds, have devised and agreed upon a plan of internal reorganization. If the properties are returned to the receivership proceeding, this Court and all creditors will be asked to approve and ratify the bondholders' plan which is eminently fair and equitable to all persons having any legitimate interest in the Debtor's estate. A copy of this plan is attached as Exhibit A. The original signed plan is held by the Successor Mortgage Trustees subject to the order of this Court to be filed in said Receivership Proceedings upon the entry of an appropriate order.

WHEREFORE, interveners pray this Honorable Court to reject and refuse to approve the plan of reorganization certified by the Interstate Commerce Commission in its Fifth and Sixth Supplemental Reports and to enter an order dismissing this proceeding and vesting all right, title and interest of the trustees in the receivers in the case of Docket No. 757-Equity, supra, and directing the trustees to turn over and deliver the same to said receivers, and further vacating and setting aside the orders heretofore entered enjoining the commencement or continuation of a suit against Debtor for the foreclosure of the first and refunding mortgage bonds, to the end that said mortgage be promptly foreclosed, and for such other and further relief as they may be entitled by the premises.

Dated at Jacksonville, Florida, this 28th day of December, 1951.

Respectfully,

(Signed) CLIFTON S. THOMSON,
(APPLETON, RICE & PERRIN, of Counsel),
Appearing for President and Directors of the Manhattan Company and J. Bryson Aird, Successor Mortgage Trustees.

Objections of First and Refunding Mortgage Trustees and Others, etc.

The undersigned Bondholders in signing the foregoing objections to the 1951 Plan, and this Motion, expressly and respectfully reserve the right to file timely additional objections to the Plan.

(Signed) HOWARD P. MACFARLANE,

(Signed) GEORGE W. ERICKSEN,
(MACFARLANE, FERGUSON, ALLISON & KELLY, of Counsel),
Appearing for F. K. Conn, Edith F. Conn, Sherman B. Forbes, Helen M. Forbes, Christine L. Holtsinger, Holtsinger Motor Company, A. R. Beyer, Nell C. Sloan and Everett E. Hennie.

(Signed) MILLER WALTON,
(WALTON, HUBBARD, SCHROEDER, LANTAFF & ATKINS, of Counsel),
Appearing for W. G. Welbon, E. N. Claughton and A. W. Corbett.

(Signed) GILES J. PATTERSON,
(PATTERSON, FREEMAN, RICHARDSON & WATSON, of Counsel),

(Signed) JOHN R. TURNEY,
Appearing for St. Joe Paper Company.

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Exhibit A

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

BONDHOLDERS' AGREEMENT.

The undersigned persons, firms, and corporations (being less than 25 in number) severally represent that they are bona fide holders of First and Refunding Mortgage 5% Bonds, herein called refunding bonds, of the Florida East Coast Railway Company, in the respective principal amounts set out opposite their respective signatures hereto, and mutually covenant and agree with one another that they will jointly or severally:

1. Join in petitioning and moving the Court herein:

(a) To disapprove and reject the Plan of Reorganization approved in the Fifth and Sixth Supplemental Report herein of the Interstate Commerce Commission for the reason that the same is unfair and inequitable and does not comport with the law of the land;

(b) To dismiss this proceeding and by order direct the trustees herein to transfer possession of the debtor's prop-

erty to Scott M. Loftin, one of the prior receivers in the case of *Bankers Trust Co., et al., as Trustees* v. *Florida East Coast Railway Company,* Consolidated Cause No. 757-Eq. herein called the receivership proceeding, and to John W. Martin, as Co-Receiver, upon making appropriate and equitable provisions for the protection of obligations of the trustees herein and for the payment of administrative expenses and allowances herein;

2. Petition the Court in said receivership proceeding:

(a) To enter a decree of foreclosure of the lien of the said first and refunding mortgage and also decree a sale of the debtor's property (including its franchises and charters) upon equitable and reasonable terms and conditions at an upset price to be fixed by the Court;

(b) To approve the Plan of Reorganization of said railroad company hereto attached and made a part hereof as Appendix A, herein called the Plan; and to approve the right of the Reorganization Managers to acquire the property pursuant to the terms thereof;

3. Join with all signatories hereto in vigorously supporting aforesaid petitions and motions introducing testimony in support thereof and in proposing said Plan of Reorganization, and cooperate with one another in every reasonable and proper way in urging, prosecuting, accepting and consummating same at the earliest possible date;

4. Upon demand made after any decree for the sale of said property, deliver their respective refunding bonds together with matured and unpaid coupons to the reorganization managers for the purpose of enabling said managers to use and cause same to be credited as, or as part of the consideration to be paid in any acquisition of said property by said managers in pursuance of the Plan of Reorganization;

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5. This agreement may be in two or more counterparts, each executed by one or more holders of said refunding bonds, which counterparts together shall constitute a single instrument.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands and seals as of the first day of November, 1951.

Attest: Bonds Held

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Appendix A.

Plan of Reorganization
of
Florida East Coast Railway Company
Proposed by Holders of Its First and Refunding Mortgage 5% Bonds.

1. *Reorganization Managers.* This Plan shall be carried out, effected, and consummated by three reorganization managers, all to be approved and appointed by the Court, one of whom shall be a receiver of the debtor's property, one a holder of first and refunding mortgage bonds selected by the Court and not connected with the St. Joe Paper Company, and one selected by the St. Joe Paper Company. Subject to the provisions of this Plan, the requirements of law, approval of the Court and of requisite competent authority, the reorganization managers shall have plenary discretion to take all such action as they may deem necessary or advisable in order to consummate and carry into execution this Plan. They shall:

1.1 Cause a new railway corporation to be organized under the laws of one of the United States, herein called the reorganized company, authorized to own and operate carrier properties and facilities and to transport for hire persons and property by railroad and any other means of transportation, possessing such other powers consistent with the provisions hereof as said managers shall deem best;

1.2 Bid in (for the account of the reorganized company) the property of the Florida East Coast Railway Company, herein called the debtor (including its franchises and charters), at any judicial sale thereof for such price and upon such conditions as they shall deem best, and cause all of said property to be conveyed to

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and vested in the reorganized company, in exchange of securities or otherwise;

1.3 Act by a majority as from time to time constituted at a meeting or in writing without a meeting;

1.4 Employ such agents, attorneys, and others as they deem necessary and delegate to them any of their power or discretion;

1.5 Not be liable for any action taken or omitted by them in good faith or by any persons employed by them in good faith except for their respective individual malfeasance or wilful neglect, *provided,* however, that the reorganization managers shall not be authorized to solicit deposits of securities for purposes other than exchange or to solicit authorization to represent security holders except upon approval by the Commission pursuant to Section 77 of the Bankruptcy Act.

2. *Capital Stock.* The reorganized company shall have an authorized capital stock of a stated value in the aggregate of $45,000,000, the stated value of each share thereof to be fixed by the reorganization managers subject to the limitation that the stated value so fixed by the reorganization managers shall not exceed $100 per share. The number of such shares which shall be issued in this reorganization shall be determined in accordance with the provisions of section 6 of this Plan. The holder of each share of said stock shall have the right to one vote at all corporate meetings and to cumulate his votes for one or more directors at any election thereof.

3. *New Mortgage.* The reorganized company shall execute and deliver a mortgage, herein called the new mortgage, which shall constitute a direct lien, subject only to the liens of the first mortgage and equipment obliga-

tions, upon all of the properties and assets of every kind owned by the reorganized company upon consummation date, except that such lien shall attach to cash and current assets of the reorganized company only while any covenant of the mortgagor is in default and also shall constitute a lien, in such manner and with such exceptions and limitations as the mortgage may provide, upon property thereafter acquired by the reorganized company or its successors or assigns. Among other things such mortgage shall provide that:

3.1 *The principal amount* of the bonds to be issued thereunder shall be unlimited except as provided therein or by law;

3.2 *Bonds secured* thereby may be issued from time to time in different series subject to such limitations and restrictions as may be specified therein and to such conditions as at the time of issue may be made by the reorganized company or imposed by the authority of law, but with respect to the lien of the new mortgage, all bonds of all series shall be equally secured;

3.3 *New Mortgage Series "A" bonds,* herein called Series "A" bonds, in a principal amount of $30,000,000 of which not more than $20,000,000 shall be authenticated and delivered in the reorganization in an amount sufficient to provide for the consummation of the plan as herein provided. The Series "A" bonds shall:

(1) Be dated as of the effective date;

(2) Mature fifty (50) years thereafter;

(3) Bear fixed interest at the rate of 4% per annum;

(4) Be redeemable or callable at their principal amount and accrued interest, in whole or in part, at

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the option of the reorganized company on any interest payment date, upon sixty (60) days' notice, after five (5) years from date of issue;

(5) Be convertible at the office of the reorganized company, at any time prior to their redemption or payment by the Company whether before or after notice to redeem has been given by company upon reasonable notice to be fixed in the mortgage, into shares of common stock at the rate of $1,000 stated value of common stock for each $1,000 of principal amount of such bonds;

(6) Provide that each registered holder of Series "A" bonds shall have the right to one vote for each $200 of principal amount of such registered bonds at corporate meetings and elections and to cumulate his vote for one or more directors at any corporate election during any period in which any interest payment is in default, beginning six months after such default, and continuing during the remaining period of such default;

(7) Provide that out of the total authorized issue at least $10,000,000 shall be reserved to provide the reorganized company with funds or reimburse it for expenditures, for additions to or betterments of its property, and, subject to such authorization or approval of competent authority as from time to time may be required, authenticate and issue for such purposes bonds of a principal amount not in excess of 66⅔ of the amount properly chargeable to capital amount.

3.4 So long as there shall not be issued and outstanding any Series "A" bonds for which provision for redemption and retirement has not been made, additional series thereof may be issued from time to

time subject to such limitations and restrictions as shall be specified in the mortgage, consonant herewith, and subject to such authorization or approval by competent authority as may from time to time be required by law; provided that such bonds of such series other than Series "A" may not be authenticated or issued by the reorganized company at any time to provide for or reimburse it for expenditures for additions or betterments to its property to an amount in excess of 75% of the amount properly chargeable to capital account of all other expenditures;

3.5 *The holders of seventy-five percent (75%) of the outstanding first mortgage bonds,* with respect to an amendment applying to all series or the bonds of each series with respect to an amendment affecting that series, in writing, may require or consent to any amendment, binding upon all such holders, to the provisions of the new mortgage or the rights and obligations of the reorganized company, or of the bonds of all or any series except an amendment postponing the maturity date of any bond for a period longer that twenty (20) years or interest thereon for a period longer than five (5) years of the maturity date of the principal, if and as extended, whichever is the later.

4. *Assumed Obligations.* The reorganized company shall assume, perform, discharge, or pay, to the extent that the same are not paid by the debtor, receivers or trustees to its estate, the following obligations of debtor;

4.1 Claims, obligations, administrative expenses, allowances, and costs arising from the administration of the debtor's estate in either the receivership or the bankruptcy proceeding;

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4.2 Claims, including labor claims, entitled to priority over the refunding mortgage;

4.3 Claims for taxes and special assessments of the United States, any state, county, district, or municipality, whether or not proved in this proceeding;

4.4 All sums determined through audit, adjustments, compromise, or litigation as due the United States under Section 322 of the Transportation Act of 1940 for over-payments made prior to effective date whether or not proved in this proceeding;

4.5 Executory contracts, leases or guaranties or equipment trust obligations theretofore assumed, affirmed or made by trustees, with the approval of the Court, which by their terms do not terminate on or before consummation date;

4.6 Claims for interest and principal, provision for payment of which has been made herein, or by the debtor or the Court, but which have not been paid because not presented for payment;

4.7 Such of the debtor's First Mortgage 4½% Bonds as may be outstanding at Consummation Date, for the retirement of which provision is made in Section 5 hereof.

5. *First Mortgage Bonds.* The reorganized company shall establish and maintain a fund, separate and apart from all its other funds, in cash or in obligations of the United States, in an amount which together with the Balance at the Consummation Date in Account #704, "Capital and Other Reserve Funds," (approximately $1,992,117.00 as at December 31, 1950), will be equal to the principal amount outstanding at Consummation Date of debtor's first mortgage 4½% bonds, which fund shall be appropriated solely for the purchase or retirement of said bonds.

Objections of First and Refunding Mortgage Trustees and Others, etc.

6. *Refunding Bondholders.* The holders of the debtor's first and refunding mortgage 5% bonds, herein called refunding bonds, other than St. Joe Paper Company, shall be entitled to receive new mortgage bonds and/or shares of stock in the reorganized company in exchange for such refunding bonds in accordance with the following elections:

RECEIVED IN EXCHANGE FOR EACH REFUNDING BOND.

	Principal Amount of First Mortgage Bonds	Stated Value of Shares of Common Stock
1st Election	None	$1,000
2nd Election	$ 500	500
3rd Election	1,000	None

St. Joe Paper Company, its successors and the assigns of all refunding bonds now held by it shall have the right only to receive $1,000 in stated value of shares of common stock for each $1,000 principal amount of refunding bonds now held by it.

7. *Unsecured Claims and Capital Stock.* The reorganization managers shall distribute cash pro rata to the holders of unsecured claims against the debtor as found by the Court including any deficiency claims of the holders of Refunding Bonds to an amount which the Court finds is the fair market value of debtor's assets which are free of the lien of the refunding mortgage.

8. *Effective Date.* All new securities herein authorized shall be dated as of the effective date of the plan which shall be the date of its consummation or a date as near in time thereto as the reorganization managers, with the approval of the District Court of the United States for the Southern District of Florida, herein called the Court, are able to determine in advance of such consummation date.

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Objections of First and Refunding Mortgage Trustees and Others, etc.

9. *Appropriation of Cash.* Cash in the treasury of the debtor (which is hereby defined to mean the sum of the net balance in Accounts 708 "Cash" and 709 "Temporary Cash Investments" of the Uniform System of Accounts for Steam Railroads prescribed by the Interstate Commerce Commission), upon the order of the Court, made from time to time on or before consummation date, shall be appropriated to payment or provision for payment:

9.1 Of matured and unpaid obligations of the trustees or receivers including all expenses of reorganization and of the receivership proceeding and all claims for compensation and expenses therein;

9.2 Of claims entitled to priority over the debtor's mortgage bonds and not assumed by the reorganized company pursuant hereto;

9.3 Of principal and accrued and unpaid interest to date of payment of the debtor's first mortgage 4½% bonds, as provided in Section 5;

9.4 Of any amount due holders of unsecured claims pursuant to Section 7 hereof;

9.5 Of claims of holders of refunding bonds who dissent from the plan to the extent, if any, allowed by the Court;

9.6 To the reorganized company of the amount of the foregoing payments not made by the Trustees (or Receivers), plus $3,500,000.00 in cash, such amount to be increased or decreased by the difference between current assets in Accounts 711 to 719 (as set forth in the Uniform Accounts of Steam Railroads prescribed by I.C.C.) inclusive, plus the cash items in Accounts 722 and 727 (as set forth in the Uniform Accounts of Steam Railroads prescribed by I.C.C.) and minus the amount which the Court shall find necessary for mate-

rials and supplies for the operation of the reorganized company (an item which, in the discussions in its 5th and 6th Supplemental Reports the Interstate Commerce Commission estimated as $2,600,000.00 net) and current liabilities in Accounts 758 to 768 (as defined above) inclusive, plus the cash items in Accounts 770 and 778 (as defined above), excluding any items representing claims for refunds of federal taxes. These funds shall constitute and be treated as working capital for the reorganized company.

9.7 Of the remainder, pro rata to holders of debtor's $45,000,000. Refunding Bonds at Consummation Date.

10. *Tax Claims for Refund.* The proceeds of any claims for refund of federal taxes which are unpaid at the Consummation Date and are thereafter collected, shall be distributed pro rata to the holders of debtor's $45,000,000 Refunding Bond issue when collected.

11. *Voting Trustees.* All shares of capital stock issuable hereunder shall be issued to and held for a period of five (5) years after the consummation date by three (3) voting trustees, all to be approved and appointed by the Court, one of whom shall be a receiver of the debtor's property, one a holder of first and refunding mortgage bonds selected by the Court and not connected with the St. Joe Paper Company, and one selected by the St. Joe Paper Company. The voting trustees shall hold said shares of capital stock for the persons entitled to receive same, to whom appropriate trustees' certificates shall be issued. It shall be the duty of the voting trustees to vote said stock annually to elect directors of the reorganized company. The voting trustees, or a majority thereof, if they approve such directions, shall vote said stock at all stockholders'

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meetings as directed by the holders of such trustees' certificates, provided that in any event at each election of directors:

11.1 The holders of a majority in principal amount of such certificates shall be, entitled by right to designate one-fourth of the directorate of the reorganized company; and

11.2 That, in addition to such one-fourth of the directorate, the trustees shall also elect as directors the persons designated by the hereinafter named certificate holders as follows, so long as they respectively hold certificates: viz,—The S. A. Lynch Corporation shall be entitled to designate two directors, F. K. Conn, one director; and W. G. Welborn, John W. Snyder, E. N. Claughton and A. W. Corbett, jointly, one director; and

11.3 That in addition, the trustees shall also elect one director designated by the minority of the certificate holders (or a majority of such minority) not connected with, affiliated with, or related to, the said S. A. Lynch Corporation, or F. K. Conn, or W. G. Welborn, J. W. Snyder, E. N. Claughton and A. W. Corbett, or St. Joe Paper Company, (if there be any such minority).

If any trustee shall resign or die, or become unable to act, the remaining trustee or trustees shall apply, or any party hereto may apply, to the Court for the appointment of a successor having the same qualifications.

12. *Board of Directors.* The board of directors of the reorganized company initially shall consist of not less than twenty-eight (28) members, and of persons designated by the reorganization managers with the approval of the Court, which persons will continue to serve as directors until the

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first meeting of the stockholders of the reorganized company, which meeting shall not be held later than sixty (60) days after consummation date.

13. *Listing of Securities.* The reorganization managers or the board of directors of the reorganized company shall cause an application for the listing of the new securities on the New York Stock Exchange to be filed on or before consummation date.

14. *Construction.* Construction of the Plan by the Court shall be final and conclusive. The Court shall have the power to cure any defect, supply any omission, or reconcile any inconsistency in such manner or to such extent that may be necessary and expedient to carry out the Plan effectively.

15. *Condition.* The acceptance of this Plan of Reorganization by the St. Joe Paper Company and the Alfred I. duPont Testamentary Trust and the exercise of any of the rights accruing to either of them by reason of the receipt of capital stock of the reorganized company in exchange for present securities of the debtor, in all future proceedings, judicial as well as administrative, including this proceeding, to which any of the parties hereto may be parties, shall be deemed and taken as conclusive evidence of their acceptance and agreement to abide by the condition that the reorganized company, the St. Joe Paper Company, the Alfred I. duPont Testamentary Trust and either of them, their respective trustees or officers and directors, unless and until otherwise authorized by order of the District Court of the Southern District of Florida, so far as it lies within their respective powers so to do, shall:

1. Preserve the existing routes and channels of trade and commerce between the lines of other carriers and the lines of the debtor;

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2. Maintain existing gateways for the interchange of traffic with such other carriers;

3. Maintain complete neutrality as between such connecting lines in handling traffic, inbound and outbound, by the debtor or the reorganized company;

4. Preserve and maintain equal service and routing for service and routing or movement of traffic to and from said connecting lines without preference or discrimination in service, rates, divisions or solicitation;

5. Maintain the line of the debtor as an open route equally available to all carriers connecting with it at Jacksonville, Florida; and

6. Refrain from influencing or attempting to influence by any means whatever the routing or movement of the traffic of any third person which originates or terminates on the line of the debtor insofar as such routing or movement is north of Jacksonville, Florida.

16. *Jurisdiction Retained by Court.* All parties to the Plan respectively move and pray the Court to retain jurisdiction of this cause for such period as it shall deem necessary to enforce the provisions of Sections 11 and 15 hereof.

Endorsed:

"Filed Jan. 2, 1952, Jacksonville, Fla.
Edwin R. Williams, Clerk."

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Additional Objections of F. K. Conn, *et al.*, and W. G. Welbon, *et al.*, to Plan of Reorganization.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

COME NOW the undersigned intervenors herein, each of whom is the owner and holder of First and Refunding Mortgage Bonds of Florida East Coast Railway Company, and respectfully shows unto the Court that: (1) They have joined and do join with Bank of Manhattan Company and J. Bryson Aird, as Successor Trustees, and with the bondholders signing same in "Objections of Holders of First and Refunding Mortgage Bonds to Modified Plan of Reorganization Certified by the Interstate Commerce Commission and Motion to Dismiss Proceeding", and (2) they herewith file other and additional objections to this Court's approval of the said plan, and respectfully move the Court to disapprove that plan on the basis of the objections hereinafter stated as well as those in which they have joined with the Successor Trustees and other bondholders:

I.

The plan ignores the requirement of the District Court and of the Court of Appeals that the Commission provide

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equitable treatment for the minority bondholders and cease to consider this proceeding as merely a partisan struggle for control of the reorganized debtor (*In re Florida East Coast R. Co.*, 81 F. Supp. 926, 934, 935; Atlantic R. Co. *vs.* St. Joe Paper Co., 179 F2 538, 543).

This was a basic reason for the Court of Appeals upholding the decision of the Trial Judge, and a basis for the statement by Chief Judge Hutcheson that an approval of the previous plan by the District Court could not have been sustained. (p. 543)

It is apparent that, as in the plan then before the Court, there has again been tremendous overemphasis on, and a preoccupation of the commission with, the struggle on the one hand of the St. Joe Paper Co. and on the other, of Atlantic Coast Line for control of the debtor, and the Commission's consequent subordination of the primary question of the legal and equitable rights of the bondholders as such. (Atlantic Railroad Company *vs.* St. Joe Paper Co., 179 F2 538, 543)

The Commission frankly admits that "It is true that the question of control has bulked large in this proceeding." (Sixth Supplemental Report, Court Document 963, p. 426). Its bulk in the minds of the majority of the Commission is demonstrated by the conclusion arrived at, which ignores the caution and suggestion of the courts which disapproved the former plan, and in effect adheres to its former decision and again attempts to excuse the subordination of the rights of the minority bondholders to the factor of control by again invoking its erroneous conception of "public interest".

The decision of the Court of Appeals makes no such exception; and constitutionally the rights of the minority bondholders can not so be dissipated by the Commission, even when acting properly in the "public interest," without provision for due compensation to the minority bond-

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holders for all of the rights of which they have been deprived. As stated in the decision of the District Court:

> "... the Commission, within its province, though by a bare majority, has held that the public interest prevents St. Joe Paper Company from holding a majority of common stock, and therefore proposes that *no bondholder* can have the common stock he desires and expected, but *all must sell their equitable rights* in this property, and must take in exchange that which is not money and which they do not desire to have. This seems to me to be unfair, inequitable, and *not a due recognition of their rights.*" *In re Florida East Coast Railway Co.*, 81 F Supp 926, 933 (emphasis supplied)

The objection to the control of St. Joe Paper Company which, as the Commission puts it, has "bulked large" in its decision, would seem to have been eliminated by the proposal made by a very substantial majority of the bondholders themselves in connection with their motion for dismissal of the reorganization proceedings.

If public interest is of such paramount importance as to necessitate the forced taking of property and property rights as the Commission seems to believe, the solution would appear to be condemnation rather than reorganization.

II.

The Commission in its effort to invoke and demonstrate public interest has, in the process of depriving the minority bondholders of their rights through preoccupation with the subject of control, applied an erroneous standard of "public interest".

It is obvious that the term "public interest" as used in the Act cannot constitutionally mean the interest of the public generally. It is not permissible for the Congress to

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abrogate its functions by permitting the Commission to act for the general public's welfare. Specifically, the Commission should not consider "public interest" in terms of the interest of the public as passengers or shippers in some unified transportation system. The "public interest" under *this* act is principally limited to the interest of the public as investors in railroad securities; that is, an interest of the public in the financial stability of railroad corporations which must be reorganized. Acting in the "public interest" may be an acceptable standard for decisions by commissions only if "the purposes of the Act, the requirements it imposes and the context of the provision in question" define and limit the legislative term "public interest". (*New York Central S. Corp.* vs. *United States,* 287, U. S. 12, 24) The Commission has used as an apology for the subservience of the interest of minority bondholders to the question of operating control of the reorganized debtor, the Senate Committee Report on the Act (Sixth Supplemental Report of the Commission, Court Document 963, p. 426).

That excerpt from the report also appears in Ecker vs. *Western Pacific Railroad Corp.,* 318 U. S. 448, 471. That same case refused to carry the term, "public interest" beyond a determination of the amount and character of capitalization of the reorganized corporation (at page 473-474), although admitting that it was not attempting to forecast the limitations of the phrase as used in the setting of the reorganization statute. Throughout that case it was obvious that the Court considered the term "public interest" to be limited by the framework of the reorganization statute. It referred to "the public interest in a soundly financed transportation system" (page 469). It considered that problems of capitalization are of public interest; and that that factor related to the total amount of issuable securities and the quality of the securities to be issued (p. 474). The Court specifically stated (p. 475),

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> "While the public interest phase of capitalization is not to be independently passed upon by the [district] Court, the Court does have statutory authority to review for obedience to legal standards,"

even with regard to the question of the amount and character of capitalization.

The Commission, in its preoccupation with the question of the operating control of the debtor has, in order to force upon the debtor corporation an operating control which it considers appropriate, unconstitutionally and illegally applied erroneous standards of "public interest". It has gone far beyond the meaning of that phrase as used in the setting of the reorganization statute.

III.

In attempting to enforce a "policy" of consolidating "railroads end-to-end" the Commission is not carrying out any policy adopted or declared by the Congress and is not acting as an administrative agency within the limits of the jurisdiction conferred on it by law, but has undertaken to convert itself into a legislative body and as such to establish and enforce a policy which the Congress has expressly and explicitly refused to adopt or declare.

IV.

If §77 of the Bankruptcy Act authorizes the proposed expropriation of the property rights of the minority bondholders, the section itself is not within but exceeds the bankruptcy power of the Congress, is not a valid exercise of the power, and violates the due process and eminent domain clauses in the Fifth Amendment to the Constitution of the United States, by attempting to deprive the minority bondholders of their property without due process of law, to

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take it not for public use but for the private use of Coast Line, and to take it without just compensation.

(Signed) HOWARD P. MACFARLANE

(Signed) GEORGE W. ERICKSEN
(MACFARLANE, FERGUSON, ALLISON & KELLY)
Attorneys for F. K. Conn, Edith F. Conn, Sherman B. Forbes, Helen M. Forbes, Christine L. Holtsinger, Holtsinger Motor Company, A. R. Beyer, Nell C. Sloan, Everett E. Hennie.
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(Signed) MILLER WALTON

(WALTON, HUBBARD, SCHROEDER, LANTAFF & ATKINS, of counsel)
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Miami 32, Florida

Endorsed:

"Filed Dec. 31, 1951, Jacksonville, Fla.
Edwin R. Williams, Clerk."

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Additional Objections of St. Joe Paper Company to Plan of Reorganization.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor,	No. 4827-J.

Comes now St. Joe Paper Company, a corporation, a holder of First and Refunding Bonds of the debtor, Florida East Coast Railway, and objects to the confirmation of the modified Plan of Reorganization certified by the Interstate Commerce Commission by its Orders of July 12 and October 25, 1951, herein called the 1951 Plan, because the same is unfair and inequitable and because it is based upon unlawful standards and findings and contrary to the law of the land.

I.

The second and third paragraphs of the "Summary of Findings" in the Fifth Supplemental Report, holds that "control of the debtor's property by the St. Joe Company would be contrary to the public interest." The only reason given for that finding was that St. Joe "by its large banking interests could influence shippers or receivers to route their shipments over any connecting carrier which, because of advantageous division arrangements, or for other reason

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of its own, it may wish to favor and that such opportunity given to a private institution of admittedly widespread power presents a situation which might have grave consequences and against which it would be impossible to protect the shipping public and the carriers with which the debtor's line connects."

The quoted reason has no factual basis in the record, and consists of a series of presumptions based upon presumptions, or of suppositions based solely upon suspicion, is unfair and inequitable and has no legal effect.

The Report also says, "The power and influence which the duPont Trust can exert is obvious. If the St. Joe Company were permitted to control the reorganized company, there would be a measure of interrelation between the company and the industries it serves which we must consider. While the predominant interests of the duPont Trust, other than the St. Joe Company, are in banking and real estate, the record justifies the conclusion that the St. Joe Company will *probably* be an important shipper or receiver of construction materials and other traffic."

There is no evidence in the record to justify or support the above conclusion. A mere "probability" is not a test of public interest or a basis for the exercise of quasi judicial power vested in the Commission by Section 77 of the Bankruptcy Act.

The Report further says:

"In view of the *probable* continuing development of the controlled properties of the duPont interests in Florida, it is *reasonable to expect* that they *will become* importantly interested in shipments of freight over the railroads of the State."

There is no evidence in the record to "reasonably" support such "expectation." The statement is the product of a prejudiced viewpoint, and is not a basis for a finding by the Commission in the exercise of its quasi judicial powers. The Report's reliance upon these conclusions and

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statements which are not supported by factual evidence, and its disregard of the binding effect of Section 17 on St. Joe's proposed Plan, destroys the effect of its purported findings, which are not in compliance with any "legal standard", and do not justify a refusal by the Commission to reorganize the debtor for the benefit of its creditors. The distrust and suspicion reflected by the Report are the product of attacks by Atlantic Coast Line counsel and his political associates upon the personalities of the officers of the St. Joe Paper Company and the Trustees of the duPont Estate, made to acquire the properties of Florida East Coast for Atlantic Coast Line "from the mortgagees," free from lien and for a consideration less than the amount of the lien, in order that Atlantic Coast Line may realize the benefits from said property that would accrue to it "over and above" or in excess of the Commission's appraised value, are not authorized by Section 77 of the Bankruptcy Statute and are in violation of the guarantees of the Fifth Amendment to the Constitution of the United States.

II.

The Plan submitted to the Commission at its 1950 hearings included a provision that the Alfred I. duPont Estate and the reorganized debtor, their respective officers and directors, would, by receipt of stock of the reorganized company, be bound so far as lay within their respective powers, to (a) preserve existing routes, channels and gateways, (b) maintain complete neutrality between connecting lines, (c) preserve and maintain equal service and routing via such lines, and (d) refrain from influencing or attempting to influence the routing or movement of traffic north of Jacksonville. Atlantic Coast Line's only answer to this was a statement by its counsel that he was authorized by his client to say that it "believed" that the traffic relationship Atlantic Coast Line had with Florida East Coast would be materially and adversely affected to its injury as well

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as to the public injury, if St. Joe owned what he called "control" (meaning thereby ownership of a majority of its stock), and that it was not satisfied that *any* "satisfactory protection" for it could be had under Section 17 for reasons which he would set forth in brief.

The Report accepted the statement of counsel as evidence and held that if "St. Joe's Plan were approved, Coast Line would face the possibility of concerted efforts to disturb important long-standing traffic relationsips." The foregoing statement is not supported by any evidence and assumes that Atlantic Coast Line had a right to prevent a reorganization in the interest of the creditors of the debtor. The Report mandatorily ordered a transfer or sale of the property of the debtor to Atlantic Coast Line, which would give Atlantic Coast Line the opportunity of holding traffic originating on the debtor, to the system rails for longer hauls, and limit competition for interchange by other connecting carriers. The finding is contrary to the public interest, and the assumptions contrary to facts, for Section 77 does not authorize the Commission to subordinate or take the legal and equitable property rights of the creditors, because of a fear or claims of Atlantic Coast Line. If it does, it is to that extent a violation of the guarantees of the Fifth Amendment to the Constitution of the United Sates.

The opinion expressed by Atlantic Coast Line's counsel was completly negatived by the contractual obligations voluntarily to be assumed by St. Joe and the duPont Estate and by the power of the Commission to prohibit discrimination. Yet, the Report brushed aside Section 17 with the statement that "We can therefore regard the conditions which the St. Joe Company invites us to impose, as only a declaration of policy, and apparently Section 17 of the Revised Plan of St. Joe Company is presumed to be self-enforcing in largest part. We can not accept it as such," that "no effective means occurs to us of enforcing such

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conditions" against the Florida National group of banks. There is no evidence that the "Group" or any of its members would have any interest in or ownership of, direct or indirect, the reorganized debtor. Read in connection with other portions of the Report, the statement tends to show that the Plan was intended to protect Atlantic Coast Line's interchange with the debtor, but that the method adopted to accomplish that result goes far beyond that, in that it takes the property of the creditors of the debtor and gives Atlantic Coast Line an advantage over connecting carriers. The Plan of the Commission is not compatible with public interest, but in direct conflict therewith.

III.

The Fifth and Sixth Reports of the Interstate Commerce Commission, though called a "Plan of Reorganization" for the debtor, is not a Plan to reorganize the debtor and does not purport to provide a reorganization of it in the interest of either its creditors or stockholders. It is an amendment or modification of a so-called Plan of Reorganization propsed or offered by Atlantic Coast Line to the Commission in 1950, similar in purpose and provisions to the Plan which was disapproved by this Court in January 1949 as unfair and inequitable to the creditors of the debtor and in violation of their legal rights.

After the Plan of the Third and Fourth Supplemental Reports had been disapproved, Atlantic Coast Line presented to the Commission a new proposed Plan by which it would acquire the properties of the debtor (despite the opposition of its creditors) free from the lien securing the First and Refunding Mortgage, for less than the amount due thereon, and without paying for the same in cash.

The present Plan is a vicarious counter-offer made by the Commission, to transfer or sell the properties of the debtor to Atlantic Coast Line, and thereby permit it to accomplish that purpose. The result of the Plan to First

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and Refunding Bondholders would be actually less than the result of the Plan disapproved. The increase in the amount of first mortgage and second mortgage income bonds is more than offset by the cancellation of the liens imposed by this Court, or, as an alternative, a reduction in the amount of first mortgage bonds to be issued by Atlantic Coast Line by the amount of those liens.

The purpose of the Atlantic Coast Line in offering its various Plans as shown by its own statements was to acquire for itself title to the property of the debtor, free from lien, for less than the amount of the First and Refunding Bonds, for an amount Atlantic Coast Line would pay, in a manner it was willing or able to pay. Atlantic Coast Line notified the Commission it could not be compelled to pay more than it agreed to pay, and in no event would it pay more than $45,000,000. in either cash or securities. Atlantic Coast Line has not agreed to accept the counter-proposal of the Commission to it. Acceptance of such counter-proposal by Atlantic Coast Line would constitute an admission that its previous offers were made for trading purpose and not in good faith, and there is no evidence or finding by the Commission that the consideration of the Plan is the maximum amount Atlantic Coast Line could or would pay for said properties.

The valuation of the property of the debtor by the Commission was based upon its assumption that its Plan provided for a reorganization of the debtor in the interest of its creditors but its Plan actually provides for a forced transfer or sale thereof to Atlantic Coast Line. The Report does not show that the consideration is that adequate consideration required by the Fifth Amendment to the Constitution of the United States, and the Constitution of Florida to be paid for a forced taking of property. The Commission's valuation was arrived at arbitrarily by estimating the annual earning capacity of the debtor in future years, and by capitalizing that sum at a rate arbitrarily

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selected. The rates of capitalization used in this Report are greater than the rates used for the same purpose in the Reports of 1942 and 1945 which provided for a reorganization of the debtor in the interests of its creditors.

In estimating the future annual income and value of the properties of the debtor, the Commission gave no consideration to values that would inure to Coast Line as a result of its ownership of the properties and the benefits that would accrue to it by its control of the long haul of traffic originating on the lines of the debtor; nor did it give consideration to the cash expenditures made by the trustees out of earnings from the operation of the property, which had been pledged by the mortgage as security, and which were legally distributable to the holders of those bonds.

The Report adopts the position taken by the Atlantic Coast Line in open Court, that the mere fact that these cash earnings were expended by the Trustees for improvements, additions and betterments, gave to the bondholders no right to be reimbursed therefor, except to such an extent as the capitalization of the debtor might be increased by the Commission, a position contrary to the rulings of this Court, which imposed liens upon the cash and property of its debtors and superior to any interest of Coast Line, to secure reimbursement of such expenditures, and despite the admission of the Coast Line President that the Coast Line was willing to pay said liens in cash. The Report orders the Court to cancel rights acquired in reorganization, in reliance upon which bondholders consented to the expenditures of the funds, failing which the amount of new first mortgage bonds to be issued by Atlantic Coast Line under the Plan shall be reduced by the amount thereof.

The Report justified its order for a forced transfer or sale of property to Atlantic Coast Line by the claim that ownership by St. Joe of the majority of the stock in the reorganized road, would be contrary to the public interest,

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—a finding based upon specious reasons not supported by evidence, which would deprive bondholders of legal and equitable rights vested in them by the mortgage contract under the law of Florida, without compensating them for the surrender of such rights.

The Report seeks to bolster its findings on the public interest by including a theoretical discussion of what it calls "a national transportation policy" which is not found in any statute or decision of Federal Courts, and rests largely upon the dissenting opinions in cases where the decision of the Court is to the contrary.

The Report assumes without evidence that a reorganization would result in a reduction of Atlantic Coast Line's interchange with the debtor. All of the northbound traffic originating on Florida East Coast is and has been for years routed by shippers, as a result of solicitation by connecting carriers, and Florida East Coast has never agreed to or exercised its influence in routing traffic north of Jacksonville over Atlantic Coast Line. Ownership of the properties by Atlantic Coast Line would give to it a permanent advantage approaching a monopoly of what is now interchange, by its ability to hold such traffic to its system rails for the long haul. The Report seeks to bolster its decision to take the property of the debtor from its creditors by numerous findings that Atlantic Coast Line will be able to operate the properties more adequately and more efficiently than a reorganized debtor could. Section 77 confers no power upon the Commission to make such an order, but if it does, the act violates Constitutional restrictions upon the legislative power of Congress. The property of the debtor is private property that can not be taken from it and transferred to another private corporation without the consent of the mortgagees or by the exercise of the power of eminent domain on the ground that it is necessary for public use.

Since the filing of the petition in this case, all net earnings from the operation of the road by the Trustees

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appointed at the request of the bondholders, has been subject to a vested lien in favor of the First and Refunding Mortgagee, and no portion of those funds can be legally diverted for any purpose except to maintain the safe operation of the debtor's road. The gross net earnings reported by the Trustees during their operation exceeds $40,000,000., out of which the bondholders have been paid only $7,875,000.

During this reorganization proceeding, interest accrued on the First and Refunding Bonds and unpaid amounts to over $24,750,000. The total interest now owing and unpaid exceeds $38,000,000. Since 1945, the amount of interest on the first mortgage paid out of earnings has been greatly increased by the delay in completion of a reorganization, due to Atlantic Coast Line's entry into this proceeding. Hundreds of thousands of dollars of the cash earnings otherwise distributable to the bondholders have been expended in the defense of their rights against the efforts of the Atlantic Coast Line to take their property from them. Coast Line has even opposed all orders of the Court giving liens to bondholders to insure reimbursement to them of cash expended for the purpose of constructing improvements, additions and betterments, and has never voluntarily agreed to reimburse them therefor. The interests of Coast Line throughout have been adverse and antagonistic to those of the bondholders.

Notwithstanding the decisions and opinions of this Court and the Court of Appeals, the Commission's Report has refused to approve a reorganization of the debtor in the interest of its creditors, and has cut the consideration which the bondholders would receive to an amount it merely assumed Atlantic Coast Line would be willing and able to pay, and in securities it would be willing to issue, in order to fit its Report into an assumed "dominant public interest Coast Line pattern."

Despite the order of the Court of Appeals that the Commission prepare a really fair and equitable Plan, the Report

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shows that the Plan proposed by its Fifth and Sixth Supplemental Reports would be less fair and equitable to the First and Refunding Bondholders than the Plan disapproved by the Courts.

The Report of the Commission was made with knowledge of the purpose of Atlantic Coast Line. It does not in good faith afford due recognition to the legal and equitable rights of the First and Refunding Bondholders, and is unfair and inequitable. It provides for a forced liquidation of the assets of the debtor and a distribution of the proceeds thereof, in order to free the property from the lien of the debtor for an inadequate and illegal consideration. The so-called Plan in purpose and in its provisions, violates Section 77 of the Bankruptcy Act, and would, if given effect, deprive the holders of the First and Refunding Bonds of their property and property rights without due process of law, contrary to the provisions of the Fifth Amendment to the Constitution of the United States and the provisions of the Constitution of Florida.

WHEREFORE, St. Joe Paper Company hereby adopts the Objections to the Plan filed this day by Bank of Manhattan Company and prays this Court to review and refuse to approve the Plan of Reorganization certified by Interstate Commerce Commission in its Fifth and Sixth Supplemental Reports, and joins with the Bank of Manhattan Company in the same and in its Motion for Order dismissing said cause filed by it in this Court as of even date herewith.

Respectfully,

ST. JOE PAPER COMPANY

By (Signed) GILES J. PATTERSON

(Signed) JOHN R. TURNEY
Of Counsel

Endorsed:

"Filed Jan. 1, 1952, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

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Motion to Vacate Order of May 18, 1948.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

St. Joe Paper Company moves this Court to vacate its Order of May 18, 1948, overruling objections to and granting petition of Atlantic Coast Line Railroad Company for leave to intervene in this cause, and as grounds for its motion says:

I.

Atlantic Coast Line is not a party in interest and has no interest in the reorganization of the debtor nor any vested interest in its property which is under mortgage. The issues tendered by the Petition for Reorganization are between the debtor and its creditors. Intervenor was not entitled to come into this suit for the purpose of having adjudicated any controversy solely between it and the First and Refunding Bondholders, for reorganization could not be enlarged by Atlantic Coast Line's intervention, for it was limited "to the field of litigation open to the original parties."

II.

Atlantic Coast Line's offers and its conduct in this case demonstrate that its interests were antagonistic to those of all first and Refunding Bondholders of the debtor, and that

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the Order permitting intervention has been used by it to prosecute this bondholder under a claim that it was acting in the public interest when, as a matter of fact, it was seeking to acquire the property of the bondholders for a consideration that would result in obtaining benefits in excess of the cost.

III.

Atlantic Coast Line's intervention has resulted in a trial in this Court of the issues raised by it which resulted in a decision adverse to its claim, a fruitless appeal from the decree to the Court of Appeals, followed by a fruitless application to the Supreme Court of the United States for a writ of certiorari, and further hearings before the Interstate Commerce Commission. Its continued participation will result in a continuance of the litigation at an expense of hundreds of thousands of dollars to the bondholders, a large portion of which has been paid or will be paid out of earnings otherwise distributable to them. It has also prevented distribution to the bondholders of cash earnings of the Trustees by the necessity for reserving and expending funds for improvements and betterments that the bondholders could not have been compelled to pay for. Between the date of the Order permitting Atlantic Coast Line to intervene and the present, there has been expended, under Orders of this Court, for the improvement of the property of the debtor, over $10,000,000, $5,000,000 of which is secured by liens imposed by Court Orders securing reimbursement to them of such expenditures. No protection has been accorded them for the balance of such expenditures. Coast Line has opposed the granting of all such liens, insisting that bondholders should pay for the improvements which under the former Plan as well as under the one now before the Court, would, if it were affirmed, inure to the benefit of Atlantic Coast Line. The Plan filed by the Atlantic Coast Line at the last hearing, offered millions of dollars less

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for the properties after they had been improved, than it offered before, and the present Report of the Commission is guilty of the same offense, though in a lesser amount.

Further continuance of litigation with Coast Line will compel the expenditure of additional hundreds of thousands of dollars by bondholders, to protect their property rights against the taking of them for the benefit of Coast Line.

IV.

At the time the Order allowing intervention was entered, the Court stated that its sole reason for granting the Petition of Atlantic Coast Line was that the Commission, by its Third and Fourth Supplemental Reports, which have been disapproved as illegal and unfair, provided for a transfer of debtor's properties to Atlantic Coast Line. The Plan of the Fifth and Sixth Supplemental Reports is similar but less beneficial to the bondholders than the Plan of the Third and Fourth Reports. They wholly disregard the law and instructions given to the Interstate Commerce Commission by the Courts, as well as their Orders disapproving the former Plan.

GILES J. PATTERSON
JOHN R. TURNEY
Counsel for St. Joe Paper Company

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Objections of duPont Trustees to Plan of Reorganization.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

Come now the interveners, JESSIE BALL duPONT, EDWARD BALL, ELBERT DENT, and THE FLORIDA NATIONAL BANK OF JACKSONVILLE, a banking corporation, as TESTAMENTARY TRUSTEES of the TRUST ESTATE created by the Last Will and Testament and Codicils of Alfred I. duPont, who are the owners and holders of $1,993,000 First and Refunding Bonds of the Debtor (hereinafter referred to as Testamentary Trustees) and object to the confirmation of the Modified Plan of Reorganization certified by the Interstate Commerce Commission to this Court by its orders of July 12 and October 25, 1951 (hereinafter referred to as the "1951 Plan"), upon the following grounds, severally:

SECTION I

OBJECTIONS TO 1951 PLAN

Interveners object to the confirmation of the modified plan of reorganization certified by the Interstate Commerce Commission by its orders of July 12 and October 25, 1951,

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herein called the "1951 plan", because the same is unfair, inequitable, based upon unlawful standards and findings and contrary to the law of the land for the following reasons:

1. *Consideration reduced below that of the condemned plan.* The only material change which the 1951 Plan makes in the plan previously condemned is to *reduce* the consideration to be paid by the Atlantic Coast Line Railroad Company, herein called "Coast Line", by more than $2,000,000. The two plans are identical in nature, framework, in the essential provisions of the several Coast Line securities proposed to be issued,[1] and also in both the number and par or stated value of the shares of capital stock, preferred and common, to be issued.

The principal amount of the second mortgage income bonds is increased by $5,625,000 (from $7,875,000 in condemned plan to $13,500,000 in 1951 Plan) and that of the first mortgage bonds ostensibly by $500,000 (from $13,500,000 to $14,000,000). However, a new provision, for either the elimination of the liens for betterments imposed by the Court prior to 1950 ($4,619,000 as of March 1, 1950)[2] or the reduction of a like amount of first mortgage bonds, has the net effect of reducing the amount of first mortgage bonds by $4,119,000, so that the net increase in total mortgage bonds under the new plan is $1,506,000.[3]

Under the new plan, the cash to be paid by Coast Line, ostensibly $4,000,000, is in fact wholly illusory, inasmuch as exactly the same amount of cash[4] is to be taken by the Coast Line from bondholders' cash. Under the provisions of the former Plan, Coast Line as of this time would be

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[1] Interest rate of first mortgage bonds is increased ¼ of one percent, from 3½ to 3¾ percent.

[2] Fifth Supplemental Report, sheet 78.

[3] Total increase of $6,125,000 in bonds minus $4,119,000 in liens.

[4] $1,000,000 in cash working capital and $3,000,000 for construction in the future of new passenger and freight stations.

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required to pay $4,125,000 to the trustees and the trustees required to pay to Coast Line only $500,000.[5] The result of the 1951 plan is to reduce by $3,625,000 the cash to be paid by Coast Line. This amount less the net increase in Second Mortgage Income Bonds ($1,506,000) results in a over-all *reduction* in the consideration to be paid of $2,119,000.

2. *The 1951 Plan fails to recognize the Rights Vested by the Court's lien orders by providing that the amount thereof be deducted from the first mortgage bonds otherwise issuable by Coast Line to the Bondholders.*

Based upon the statement that "the earnings reflect the savings resulting from new equipment acquired between March, 1945 and July, 1950" the Commission concludes that "our valuation reflects fully the value of these equipment acquisitions" (5th Supplemental Report, Sheet 79). This reasoning is specious. As a matter of fact, if any increase were allowed on account of the liens, it could only have been in second mortgage income bonds for the reason that the first mortgage bonds were increased only by $500,000, the preferred stock and the common stock unchanged, the cash reduced by $3,625,000. Apart from the liens, the increase in bonds was $6,125,000, the reduction in cash $3,625,000, or a net increase of $2,500,000, *all of which was in second mortgage income bonds. This is all that could have been allowed for the liens.* Certainly this is not the "equitable equivalent" or "quid pro quo" of a lien fixed

[5] Under the former plan, the Coast Line was to be paid only for the *balance* of the reserve "any part of such fund which may not have been expended or appropriated at the date of consummation of the plan" (267 I. C. C. 377). The net amount reserved for additions and betterments other than equipment maturities and the Ft. Pierce cut-off was $5,855,551 and for the Ft. Pierce cut-off $1,170,000, a total of $7,025,511 plus working capital of $500,000 (267 I. C. C. 363). As of December 31, 1949, the Trustees had expended on this program $5,070,512 in capital charges and $3,225,857 in operating charges or a total of $8,296,369; during the first three months of 1950, they spent an additional $588,616 and estimated that they would expend during the remainder of the year 1950 $2,360,508 to complete the rail program (Loftin, Exhibit 304). As of December 31, 1949, therefore, the entire amount reserved in the former plan had been spent by the Trustees for the purposes of the reserve, leaving no balance therein.

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by the Court as superior to all liens except the present first mortgage.

As will be shown in a later connection, the finding with respect to "normal earning power" so far from taking into effect the increased earnings due to the equipment fails by several hundred thousand dollars, to reflect average earnings of the debtor during the past five years.

The Court found that the purpose for which the expenditures secured by these liens was to improve the earning power of the debtor's estate. The Court would have been warranted under such circumstances in authorizing the issuance of Trustee's certificates and if these certificates had been issued, they would have constituted a prior lien on all funds and property in the hands of the Trustees and superior even to the rights of the refunding mortgage. The Court very properly found that this was unnecessary in view of the large amount of cash on hand. In this respect, therefore, these liens resemble and should have been treated by the Commission as possessing the attributes of Trustees' certificates instead of being subordinated to and confused with secondary claims.

In addition to authorizing the expenditures covered by the foregoing liens, this Court, either with the consent of the bondholders, or without any objection by them, during the course of the bankruptcy and the receivership proceedings at times before Coast Line had indicated any intention or desire to intervene herein, has authorized the trustees to expend many millions of dollars for the extension, improvement, additions and betterments to the property. These expenditures were authorized by the Court and consented to by the bondholders in the belief that they would improve and better the property of which the bondholders would ultimately become the legal as well as the equitable owners. The Plan, by divesting the bondholders of the mortgaged property, would take from them their right to recoup from the mortgaged property the benefits flowing

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from the expenditures of these large amounts of their funds.

3. *The 1951 Plan would expropriate Bondholders' cash of $4,000,000, which The Plan Unlawfully Transfers to Coast Line for the purpose of:*

(1) constructing, in the future, passenger and freight stations ($3,000,000) for the Coast Line; and (2) providing Coast Line's treasury with additional working capital ($1,000,000).

The proposed station construction was a part of a future four year building program prepared by trustees at Coast Line's request. Except as might otherwise be required by order of this Court, "it is not the intention of the trustees at the present time to build any stations." (Loftin, Tr. 5531), although preliminary plans have been made respecting the Miami Station. None of these improvements were assumed to be completed in the appraisal of the physical or earning values of the property.[6] These improvements are in no sense routine renewals, nor are they "essential to the continued operation of the railroad."[7] The claimed urgency, at least for some of them, is to "improve the company's earning power."[8]

The present plan increases the amount of cash to be expropriated and paid into Coast Line treasury as working capital from $500,000 to $1,000,000. If this were a real reorganization where the debtor or its successor continues in operation as a going concern, provision of cash working capital would be proper. Here Debtor is to be completely liquidated, its corporate and personnel organization destroyed, and its property transferred to another wholly alien corporation for exclusive operation by the latter as

[6] Fifth Supplemental Report, Sheet 51.

[7] Lackawanna Iron, etc. *v.* Farmers' Trust Co., 176 U. S. 295; Southern Ry. *v.* Carnegie Steel Co., 176 U. S. 255.

[8] Fifth Supplemental Report, Sheet 83.

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an integral part of the latter's property, at prices less than the junk value of its physical property, $48,460,168.[9]

There is no authority to warrant such a confiscation of Bondholders' cash for either of these purposes.

4. *If the 1951 plan be viewed as one of reorganization rather than one for a liquidating sale, it, contrary to the 5th Amendment, would contravene the Absolute Priority Rule of the Federal Courts by releasing, without payment of the mortgage debt, the lien of the refunding mortgage, in order to vest the property, free of such lien, in the holder of a junior claim.*

Coast Line's status in this proceeding is that of an assignee of all or part of an unsecured claim filed by the stockholders, admittedly junior to the debt of about $90,000,000 secured by the refunding mortgage. The plan provides that:

(1) The mortgaged property be *"vested"* in Coast Line;

(2) Lien of refunding mortgage be "discharged, void and unenforceable";

(3) The mortgage debt be cut in half through the device of an administrative appraisal, based largely upon representations of Coast Line;[10]

(4) This "appraised value" be paid senior creditors, not in cash but in speculative securities of the junior creditor;

(5) Senior creditors be denied all other rights for the "protection and the realization by them of the value of their equity"[11] including the right to a

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[9] Frohman, Exhibit 461.

[10] Preble Corp. *v.* Wentworth, 84 Fed. 2d. 73; Tennessee Publishing Co., 299 U. S. 18, 81 L. Ed. 13.

[11] Consolidated Rock Products *v.* DuBois, 312 U. S. 510.

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judicial foreclosure sale at which they may bid the debt for the property.[12]

5. The *1951 Plan is Based upon an Unlawful Standard of Value.*

The Commission, upon request, found that refunding bondholders "are the equitable owners of the property" whose title, however, is subject to divestment, without sale, in the reorganization proceeding. In providing for such divestment, it rejected as unworthy of "any appreciable weight" the fair market value of the physical assets comprising the property, as evidenced by the investment, original cost, or original cost less depreciation and even the junk value thereof, asserting that the sole and controlling criterion was earning value.[13]

In the determination of the permissible capitalization or in the marshalling of conflicting liens in a reorganization proceeding, the earning value is and should be the controlling criterion. But the 1951 Plan is in no true sense a plan of reorganization. It is one for the complete liquidation of the Debtor and the transfer of all its property upon an appraisal and without sale or bidding to one who is at the most a junior creditor and at the least a covetous stranger. Under such circumstances, the Coast Line is in no better position than the government would be should it undertake either to condemn the railroad or to limit its rates to less than a fair and reasonable return upon its investment. The owners of the property are therefore entitled to its *fair market value* according to the standards required by the Fifth Amendment.

6. *The 1951 Plan Unlawfully and Arbitrarily Understates the Earning Power of Debtor.*

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[12] Louisville Joint Stock Land v. Radford, 295 U. S. 555; Tennessee Publishing Co. v. American Nat'l. Bank, 299 U. S. 18, 81 L. Ed. 13; Francisco Building Corp. Ltd. v. Battson, 83 Fed. 2d. 93; Security-First Nat'l. Bank v. Rindge Land and Navigation Co., 85 Fed. 2d. 557; Texas Hotel Securities Corp. v. Waco Development Co., 87 Fed. 2d. 395.

[13] Document 938, page 207.

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Objections of duPont Trustees to Plan of Reorganization.

The Debtor's income available for return in a "normal year" is appraised by the Commission at $2,300,000. This amount is only $150,000 above that estimated by the putative purchaser. The average earnings for the past five years as adjusted by the Commission (Document 938, p. 163) are $2,520,688. In appraising the Coast Line average earnings, the three last years then available were used because "the results for the year 1946 were not included with these years because the Coast Line regarded those results too much affected by post war adjustments." (Document 938, p. 201)[14]

If the Commission had used the same basis in appraising the Debtor's earnings as it used in appraising the Coast Line earnings, the average earnings would have been $2,500,000 instead of $2,300,000. The Commission found that there were savings in personnel expense which would occur as a result of an internal reorganization of approximately a little less than $100,000.[15]

The Commission, in appraising the earnings of the Debtor for the period 1946 to 1950 made an adjustment for the interim increase in mail pay. Subsequent to the Sixth Supplemental Report the Commission made its final order in the Mail Pay Case, which will have the effect of increasing the earnings of the Debtor by an additional $100,000. per year. Due to these errors, even on the basis used by the Commission, the earnings are understated by at least $400,000 per year. This appraisal was made ostensibly to fix the "maximum permissible capitalization" of a "hypothetical" internal reorganization although the plan contemplated none. Having in mind the extreme conservatism

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[14] The earnings for the Coast Line in 1946 which, after the rail adjustment made by the Commission, were $6,016,000 which was about half the average for the three years 1947 to 1949 ($13,198,000).

[15] At Sheet 192 of Document 938, the Commission found that of the non-dependent savings of $135,983. designated by the witness McWilliams as savings which would be made in the case of an internal reorganization as well as in the case of merger by the Coast Line, 25% should be "credited to integration". This would leave 75% or approximately $100,000 of savings which would result in an internal reorganization. This amount of savings was ignored by the Commission both in appraising the savings under integration and in ascertaining the future income of the Debtor.

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with which permissible capitalizations are made, the appraisal, while low, is not wholly indefensible for that limited purpose.

In reality, however, the only use, if not purpose, of this estimate was in fixing a value of the mortgaged assets to be divested out of the bondholders into Coast Line. For such a purpose, the estimate is highly arbitrary and confiscatory. In the fixing of such a value, the bondholders are entitled to a realistic appraisal of all the circumstances which are likely to affect future earnings of the Debtor, as well as its past earnings history.

The Commission's appraisal is less than three-fifths of the average earnings over the past 15 years,[16] one-half the average over the past 10 years[17] and about three fourths those over the past 5 years.[18] In the past four years Debtor's earnings have been greatly depleted by huge passenger deficits. In and prior to 1946, it had been able to about break even in passenger service, but during the past three years, these deficits have averaged well over $3,000,000 per year. In 1949, the passenger deficit amounted to $3,659,000 (Tr. 3446). Had it not been for these deficits, Debtor's earnings over the past several years would have exceeded $6,000,000 or two and one-half times the amount of the Commission's appraisal.

In addition to these facts there was brought to the attention of the Commission a method whereby these passenger deficits would be reduced substantially by consolidation of the head-end traffics. This proposal was brushed aside with the statement: "We conclude that the proposal * * * is not sufficiently developed of record to permit us to consider in connection with our estimates of Debtor's future earnings that the proposed economies are reasonably possible of realization". The trustees have under active study and consideration plans respecting further dieselization and

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16 $3,895,000.

17 $5,324,000.

18 $2,520,688 as adjusted by the Commission (Document 938, p. 163).

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economies in connection with passenger train service which the bondholders believe should further increase the earnings of the Debtor by more than one million dollars per year. Debtor's growth of traffic is greater than any of its immediate connections which are the three principal southern railroads, Coast Line, Seaboard and Southern. Its increase in freight revenue per mile of road in the post-war period has been twice that of the Coast Line and substantially greater than that of either Seaboard or Southern. The territory which it serves is one of the most rapidly growing and developing, commercially and industrially, in the country. The very fact that these elements are necessarily speculative stresses the inherent inequity of depriving an owner of his property by administrative appraisal. The earning power of Debtor is not less than $5,000,000 per year.

7. *The 1951 Plan Unlawfully Provides for the Taking of Bondholders' Property for a Grossly Inadequate Consideration.* The plan provides a consideration of $42,500,000 in par amount of Coast Line stock and bonds, having a market value said to be $39,694,000.[19] The clearest statement of the finding as to the value of the property taken is found at Sheet 96 of the Fifth Supplemental Report (Document 938, page 242), where, in response to a specific request, it is stated:

> "The fair value of the asset subject to the first and refunding mortgage bonds and subject to the equipment liens of $5,314,000 we have found to be approximately $51,314,000."

Upon this basis, the value of the equity in the assets, after deduction of the equipment obligations, is $46,000,000. This would produce a deficit in the consideration of nearly $7,000,000 upon the face of the Report. However, the Sixth

[19] Document 938, p. 218, less cash for $4,000,000 to be paid by Coast Line which is offset by the payment of a like sum in cash to it.

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Supplemental Report attempts to explain this incongruity by stating:

> "Our * * * determination of the * * * value of the debtor's property * * * was in Coast Line securities." (Sheet 5)

This is a roundabout way of finding that the bondholders' equity was worth only $39,694,000. This amount is about one-half the physical value[20] and far less than the junk value of the salvageable materials.

Use of the ratemaking value is justified by the demonstrated earning power of the property. The rate of return of all class I railroads of the country upon their ratemaking value has averaged about 4% during the past 25 years. For Debtor to earn at this rate upon its physical value would require earnings of $3,000,000 per year. There has been no year in the last ten in which the freight service of the company has not produced earnings far greater than that amount, and as heretofore shown, Debtor's earnings, after *deducting passenger losses averaging* $3,000,000 per year, have averaged above that amount.

Taking into account the tremendous potential growth of the territory served by Debtor, its magnificent physical condition, the fact that it has been completely rehabilitated during the past few years, and the actual record of net earnings while in bankruptcy, the tremendous possibilities of increasing net earnings by the reduction in passenger deficits, there is no sound basis for appraising the property at less than its rate-making value. The fair market value of the mortgaged assets is not less than $75,000,000.

No one is forcing Coast Line to take these assets. Indeed no one but the Coast Line and a majority of the Commission desires that it do so. Under such circumstances, there is no reason why it should be permitted to seize them at distress prices.

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[20] Investment $78,000,000; original cost, $91,000,000; reproduction cost less depreciation, $76,000,000.

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Objections of duPont Trustees to Plan of Reorganization.

Coast Line urges that the proper criterion in considering the fairness and equity of the plan was the speculated prices on a non-existent market of the hypothetical issues of an unorganized successor corporation to the Debtor. While the Commission ostensibly rejected this criterion as not giving "a just and reasonable result",[21] in its attempt to justify the fairness of its plan it applied much the same test. Thus it somewhat grudgingly admits that the first mortgage bonds under the St. Joe plan would be worth par and that " the evidence shows that the St. Joe Company witnesses believe that under the St. Joe Company plan there would not be any free market in the stock and that it would be worth, at least to the St. Joe Company, as much as the bonds",[21] from which it necessarily followed that the securities under the St. Joe plan would be worth at least $45,000,000. Despite this admission, it sets up a "theoretical" capital structure of a hypothetical company, prices the securities which it assumes would be issued and finds that their aggregate market value would be less than those of the Coast Line securities. This is nothing more nor less than holding that the plan is fair to the refunding bondholders because it will give them more than they would receive under some other plan of reorganization. Such a procedure has been expressly condemned by the Supreme Court.[22]

8. *The 1951 Plan Arbitrarily Transfers to Coast Line the Right of Refunding Bondholders to Recoup their Unpaid Claims out of Debtor's Earnings in Future Pros-*

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21 Document 938, p. 213.

22 In Case v. Los Angeles Lumber Company, 308 U. S. 107, it was said:

"The fact that bondholders might fare worse as a result of a foreclosure and liquidation than they would by taking a Debtor's plan * * * can have no relevant bearing on whether a proposed plan is fair and equitable * * *. Submission to coercion is not the application of 'fair and equitable standards.' To hold that * * * creditors of a hopelessly insolvent Debtor may be forced to share the already insufficient assets with stockholders because apart from rehabilitation * * * they would suffer a worse fate would disregard the standards of 'fair and equitable' * * *."

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perous Years. Under the plan, Coast Line has a fixed obligation to pay the bondholders about $525,000 per year, or $12.00 per refunding bond. In years in which earnings warrant it, it would pay in addition $575,000 in contingent interest, $360,000 in preferred and $240,000 in common dividends or a total of about $1,700,000 or $38.00 per bond. In a year of "normal earnings" for Debtor, the net income *after* income taxes at the normal rate (38%)[23] Coast Line would take from operation of Debtor's property $3.00 per bond ($145,000) more than it would pay the bondholders. In a year equal to the average of the past 37 years, it would take $7.00; of the past 15 years, $23.00; of the past 5 years, $13.00; and of the past 10 years, it would take $48.00, or one and one-fourth times as much as the owners of the property. In addition, it would receive the entire benefits of any "savings" resulting from the merger. These simple calculations not only reveal how unfair and inequitable is the 1951 plan, but also show that *no* plan to divest the owners of their security can be devised which will fairly and equitably evaluate this admitted right of the owners of the property, if for no other reason than because of the demonstrated power of the debtor to make tremendous earnings in abnormally good years. The *only* way in which this right to recoup can be preserved is the legal and equitable method of reorganizing the debtor for the benefit of the creditors as contemplated by the law.

9. *The 1951 Plan is Unjust, Unfair and Inequitable in the Allocation of the "Savings" Claimed to be Possible as a Result of the Merger.*

Coast Line's claim that it would be able, through elimination of employees, to save approximately $1,558,000 per year was based upon "over-all judgment factors" and the assumption that the additional volume of work could be

[23] The above calculations would not be greatly affected even if it be assumed that the present war tax rates continue indefinitely—Coast Line would about break even at the normal rate, gain about $2 per bond at the 37-year rate; $15 at the rate of past 15 years; $7 past 5 years; and $34 over the past 10 years.

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handled at a lesser unit cost. Witnesses for the bondholders challenged these estimates as being based upon unsound premises. From a detailed analysis, they found that the maximum saving would be approximately $386,000 per year. The Commission made a general over-all appraisal of $925,000. It further found that half of these savings should be credited to the refunding bondholders and that this particular income should be capitalized at 6.3%. $462,500 per year capitalized at this rate would produce approximately $7,345,000. However, the Commission found that the value of Debtor's property *"in terms of Coast Line securities"* (and cash) and including half of the prospective savings, is $46,500,000,[24] plus outstanding equipment obligations. If, from this latter amount, this capital value of one-half of the savings is deducted, there remains only $39,155,000 for the physical properties, exclusive of savings and equipment obligations. This amount is $6,845,000 less than the "fair value of the assets", belonging to the refunding bondholders as found by the Commission ($46,000,000) and $1,345,000 less than the value ($40,500,000) found by the Commission in the previous Third and Fourth Supplemental Reports.

This claim of so-called operating economies was deemed by both Coast Line and the Commission to be indispensable to justify the divestment of the property out of the bondholders and into the Coast Line. Having served that purpose, in the eyes of its proponents, the effort to minimize the inexorable conclusion that additional value therefor must be allowed to the bondholders is palpably and unlawfully specious. If the assets were worth $46,000,000, and if there were annual savings of $462,500 to which the bondholders were entitled, and if a fair rate of capitalization is 6.3%, all as expressly found by the Commission, then manifestly, the plan is unfair and inequitable upon its face, in fixing the total ostensible consideration at $46,500,000, and the actual consideration at less than 40 million dollars.

[24] Plus equipment obligations.

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Objections of duPont Trustees to Plan of Reorganization.

10. *The 1951 Plan is Unlawful* in that it is based upon the finding that "the interest of the railroad employees affected by the merger will be adequately protected", which finding is not supported by any substantial evidence and is contrary to the overwhelming preponderance of the evidence which is to the effect that hundreds of employees of the Debtor will be discharged or demoted or compelled to move their homes and families at great financial loss and unnecessary personal distress and suffering.

11. *The 1951 Plan Is Unlawful in that it is Based upon the Finding* that "its consummation would not result in the disruption of routes of channels of trade and commerce between points on the lines of the Debtor and points north of Jacksonville" which finding is not supported by any substantial evidence and is contrary to the overwhelming weight of the evidence.

12. *The Plan is unfair and inequitable to minority* bondholders. As in the former plan which was condemned by the Court in part for this reason, the present plan denies the bondholders other than the St. Joe Paper Company the right to realization upon the security for their claims and requires them against their will to give up their equitable rights in the property and take in exchange therefor securities of the Coast Line which they do not desire to have, all because of the finding that the holding of the majority of the common stock by the St. Joe Paper Company would be incompatible with the public interest.

Wholly apart from the fact that the finding of incompatibility is without basis in the record, the injustice and unfairness to the minority bondholders is clear. If there is any compelling public reason why the St. Joe Paper Company may not lawfully exercise control of the debtor, the minority bondholders should not be thus penalized as a consequence. There are other ways, as Judge Sibley suggested,

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by which such an end could be achieved without imposing such an unfair result upon the minority bondholders.[25]

The only reason given by the Commission for not adopting the remedy suggested by Judge Sibley is that the "voting trust" would have to be for an indefinite period, whereas the voting trust approved by the Commission and Courts in other reorganization plans have been relatively for short periods and for different purposes. Furthermore the Commission, under similar conditions, and to prevent a control held by it to be contrary to the public interest, has required railroad stock to be trusteed for periods of time sufficient to prevent any consequent injury to the public.

13. *The 1951 Plan is based upon the arbitrary and erroneous finding that it would be incompatible with the public* interest for a plan substantially similar to the so-called St. Joe Company plan to be approved.

14. *The 1951 Plan is Unlawful in that it is Based upon the Finding* without substantial evidence and contrary to the overwhelming weight of the evidence which is to the effect that merger of the Debtor's property into the Coast Line would not adversely affect and impair the transportation service to, nor impair the proper development of, the communities and territories served by said Debtor's lines, all of which was found to be established by the hearing Examiner who heard the witnesses and whose findings with respect thereto were abitrarily and unwarrantedly ignored and disregarded by the Commission.

15. *The Plan is unlawful because* (1) it does not afford due recognition of the rights of the Refunding bondholders but unlawfully subordinates such rights to the interest of the Coast Line; (2) it requires a merger of the debtor into a non-affiliated railroad forcibly and against the will of the vast majority, if not all, of the equitable owners of the

[25] 81 Sup. 926, 933.

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property; (3) it provides for unification of the debtor into the Coast Line contrary to the provisions of the Interstate Commerce Act; (4) it provides for the taking of the property of the bondholders and the vesting of it in a stranger without authority of law and without payment of just compensation therefor, contrary to the provisions of the Fifth Amendment; and (5) it unlawfully impairs and hinders the enforcement by the bondholders of their claims as creditors of the Debtor.

16. *Unlawful Standards of Public Interest.*

The Commission's Report (Document 938 p. 176) states that

> "the issue before us is whether the public interest will be better served by continuation of the Florida East Coast as a stub-end railroad but under the control of the duPont interests or by its integration into a large railroad system."

Following this statement, there is an elaborate statement of generalities which in so far as they relate to this proceeding are without factual support in the record from which it is concluded (p. 181).

> "that it has been a sound policy to consolidate railroads end to end for the purpose of adequately serving the public interest."

In a later connection, we will consider the factual fallacy underlying this conclusion. There is no provision in the Bankruptcy Act which provides that in reorganization the Commission shall consider a national policy if there were such a policy to consolidate the railroads of the country. Except by the mischance of inept phraseology, there is not anything in the Act that would warrant that matter to be considered at all. On the other hand, there is no such national policy.

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Objections of duPont Trustees to Plan of Reorganization.

During the first twenty years after the Northern Securities case (1904), railroad consolidations were deemed to be prohibited in large measure by the anti-trust laws. The Transportation Act of 1920 for the first time authorized voluntary consolidations contrary to the provision of the Clayton and Sherman Acts, provided they were approved by the Commission as consistent with the public interest in accordance with an over-all national consolidation plan. Congress consistently refused to give to the Commission the right to compel compulsory consolidation and in 1940, it repealed the Act providing for a national system of consolidations and left only provisions for voluntary consolidations in certain restricted cases. To say that in a bankruptcy case, *the* issue before the Commission in formulating a plan is to determine whether it is better for the public that the Debtor's property be consolidated with another carrier is to add something by administrative fiat which no law of the Congress has ever authorized. As a result of this improper and unlawful standard in the determination of public interest, the Commission's plan subordinates the rights of the creditors entirely to a "supposed" public national policy of consolidation which does not exist. As a result of this fundamental error, the Commission subordinated the issue of whether or not an internal reorganization was compatible with the public interest, an issue which the creditors of the Debtor were entitled to have considered independently of extraneous considerations, to a supposed superior public interest for a merger of the Debtor with the Atlantic Coast Line contrary to the explicit finding of the Court of Appeals in this case. There is no provision of Federal law which makes that an issue in this proceeding. If the Commission has the implied power under the Bankruptcy Act, which we deny, that power can be exercised only when the public interest affirmatively requires the merger in order to preserve adequate transportation facilities. No such claim is here made. Further, there is no claim that there has been or will be any inade-

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quacy in transportation service under independent operation of the Debtor's property.

17. *The Report states*[26] *contrary to the undisputed evidence, that the Debtor has been unable to cope with cycles of changes in the volume of traffic;* that it is particularly vulnerable to truck competition; that the neighboring trunk line roads have a better balanced traffic, a more stable flow of business, and that it is unable to meet the competition of a parallel trunk line; that it is akin to a secondary main line or a major branch line of one of these larger systems, and that its operations have been less remunerative; and that finally, as a stub end railroad, it does not have sufficient earning power for successful operations. None of these statements is supported by a scintilla of evidence in the record, and each of them is untrue.

Since the abandonment of the Key West extension in 1935, there has never been a year in which the Debtor did not operate at a substantial profit. It is incomprehensible that the statement that the Debtor is comparable to a branch line of the neighboring "trunk lines" could have been made by anyone who had the slightest exposure to the record in this proceeding. During the 5 years, 1946 to 1950, the average revenue per mile of road of the Debtor was twice that of the Coast Line; one and one-half times that of the Seaboard; and a third greater than that of the Southern. Its passenger revenues per mile of road during this period were three times as great as those of either the Coast Line, the Seaboard or the Southern, and *greater than all three of them combined.* Freight revenues per mile of road of the Debtor were about the same as the Southern, 65% greater than those of the Coast Line, and 25% greater than those of the Seaboard. Its freight revenue per mile of road was 25% greater than the *total* revenue, freight and passenger, of the Coast Line. During the 10 years from 1939 to 1949, the Debtor's tonnage was two and one-half

[26] Sheets 176 and 177 of Fifth Supplemental Report.

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times as great in the last year as it was in the first: that of the Coast Line less than twice; the Seaboard slightly over twice; and the Southern about one and one-half times. So far as traffic, tonnage or revenue is concerned, "the branch line theory," advanced for the first time in this proceeding in the Fifth Supplemental Report, is nothing short of preposterous, coming as it does from a body of reputed transportation experts.

The same thing is true to an even greater degree with respect to the findings of efficiency and economy. An over-all measure of the relative strength and efficiency of carrier operations under the same rate structure is the operating ratio off the freight and passenger services. In the 4-year period, 1946 to 1949, the freight operating ratio of the debtor was lower than that of either the Coast Line, the Southern or the Seaboard, being nearly 10 percentage points (78.9% compared with 88.6%)[27] lower than that of the Coast Line. Its passenger expense ratio for the same period was 123% which was slightly lower than that of any of the three carriers. Its transportation ratio was also lower, being 3.8 percentage points or 10% lower than that of Coast Line. Its ratio of wage expense was lower and its freight car miles per operating employee greater than either of the other three trunk lines. It spent $900 per equated track mile more for maintenance of way than did the Coast Line; $700 more than the Seaboard; and $500 more than the Southern. The same conditions prevailed throughout the period from 1936 to date.

The statement that Debtor does not have earning power sufficient for successful operations is also demonstrated to be untrue by the uncontradicted evidence of record. In every year since the abandonment of the Key West extension, the Debtor has fully earned interest upon its first mortgage and in all but two of those years (in each of which

[27] In terms of Debtor's average freight revenue, about 16 million dollars, this one factor would produce over 1½ million dollars more net revenue under independent operation than under Coast Line!

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it lacked doing so by less than $60,000), its earnings would have been sufficient to pay interest at current rates upon a bond issue of $20,000,000 as proposed by Bondholders. Over the past 15 years, it has earned 4% interest upon this amount more than three times over. On the contrary, Coast Line, on its own operations has failed to earn its *present* fixed charges (before income taxes) in 9 out of the last 20 years, two of them being 1946 and 1947. It was able to pay these charges only because of the dividends upon the Louisville & Nashville stock, a free asset in its treasury, which it is at liberty to dispose of whenever its cash position further deteriorates.

Section II

Further Objections by the duPont Testamentary Trustees Relating to Compatibility with the Public Interest.

18. *The ownership of Voting Stock of the Reorganized Corporation and the Control thereof by the St. Joe Company or the duPont Interests is Compatible with the Public Interest,* and all findings and conclusions of the Commission to the contrary are illegal and unwarranted.

At the very outset of the 5th Supplemental Report the Commission declared:[28]

> "In disapproving the plan which we approved, the district court, among other things, held that the matter of compatibility of a plan with the public interest is left by the statute to us for decision and is not to be reviewed by the Court."

The foregoing quotation from the Report and the Report as a whole clearly show that the Commission seized upon and treated isolated portions of the Court's opinion like a Writ of Right, (a) *permitting* the Commission, in its uncontrolled discretion, to strike down a Plan of Reorganization

[28] Sheet 2, Fifth Supplemental Report.

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proposed by the equitable owners of the Debtor's property, and impose another Plan upon them, upon the pretext of compatibility with the public interest, and at the same time (b) *abdicating* all right of judicial review of the Commission's act in so doing.

An examination of the isolated portions of Judge Sibley's opinion[29] with their context, and an examination of the opinion as a whole discloses that the Commission's construction of it is unwarranted. From the earliest days of the Commission's existence the Courts have stricken down orders of the Commission (and of other administrative bodies) when:

> (i) Its findings and conclusions of fact are not supported by substantial evidence; or
>
> (ii) Improper criteria or illegal standards are applied and followed.[30]

Those rules have been applied by the Supreme Court to public interest findings under Section 77, dealing with compatibility with the public interest,[31] and the Supreme Court in two companion cases in the year 1951[32] substantially broadened the judicial power and duty to review administrative orders and greatly clarified the law upon that subject. The very terms of Section 77(d) require the Commission to "state fully the reasons for its conclusions". The "reasons" thus required to be stated for the "conclusions" are the standards or criteria which are questions of law for the Court (they must be appropriate and authorized by the statute) and those "reasons" or findings of fact must be supported by substantial evidence. Otherwise, the Plan must go down.

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29 81 Fed. Supp. 926.

30 The criterion or standard is always a question of law for the Court. Powers *vs.* Commissioner, 312 U. S. 259.

31 *Ecker* v. *Western Pacific R. R. Corp.*, 318 U. S. 448.

32 *Universal Camera Corp.* v. *National L. R. B. D.*, 340 U. S. 474. *National L. R. B. D.* vs. *Pittsburg S. S. Co.*, 340 U. S. 498. (Both Feb. 26, 1951.)

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Objections of duPont Trustees to Plan of Reorganization.

19. *The Standards or Criteria with Respect to Compatibility with Public Interest are Inappropriate, Unauthorized, and Illegal and there is no Substantial Evidence to Support the Commission's Findings.*

(a) The Commission erroneously and improperly construed the phrase, "public interest" in Section 77 to embrace and contemplate the attainment of a general program of railroad consolidation, whereas the phrase "public interest", as used by Congress in Section 77, was not intended to justify or authorize a program of railroad consolidation, but, on the contrary, was a phrase of art, intended primarily to cover the sound financial reconstruction of the Debtor to the end that such Debtor might reasonably be anticipated to finance the requirements of adequate transportation systems in the future.[38]

(b) The 1951 Plan erroneously and illegally based its conclusions of public interest on the premise that "public interest" in a reorganization of a debtor under Section 77 comprehended a general program of railroad consolidation and a general integration of all our nation's railroads "so that they well be able to function as nearly as possible as a national unit." It is clear from the Report that this is the basic determination on public interest made by the Commission and that in this latest Report the Commission has abandoned any real and substantial interest in the personnel of control of the Debtor. This conclusion follows from the statement of the Commission that:

> "We are mindful of the fact that railroad managements change over the years and that we must look deeper than personalities, even though they may have a bearing on the issues, in seeking to find where the immediate and long-range interests of the public lie in a situation such as here presented." (Fifth Supplemental Report, Sheet 39.)

[38] *Ecker* v. *Western Pacific R. Co.*, 318 U. S. 448, 481.

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(c) The Commission's conclusion that public interest demanded a consolidation of the Debtor with the Coast Line rested upon:

(i) The finding by the Commission that a so-called "stub-end railroad", which is the manner in which the Commission describes the Debtor:

"do(es) not have sufficient earning power for successful operation." Such a finding is not only without support in the Record, but is contrary to, and inconsistent with the Record as we have shown in Paragraph (17) above.

(ii) The finding that,

"Obstruction to the efficient flow of commerce to and from the section of the Florida peninsula served by the Florida East Coast would be lessened by the acquisition of this carrier by the Coast Line,"

is without any basis in the record and is contrary to the record.

(iii) A construction of the commodities clause of the Interstate Commerce Act, at variance with the construction given such clause by the decisions of the Supreme Court in

United States v. Elgin, J. & E. Ry. Co., 298 U. S. 492 (1936) and *United States v. South Buffalo RC, 333 U. S. 771 (1948)*

the Commission recognizes has not been overruled or reversed and "technically remains the law", but which nonetheless it refuses in this case to follow.[34] In formulating a plan under Section 77 and in construing the provisions of the Interstate Commerce Act, the Commission is without authority to overrule and go contrary to the binding authority of the United States

[34] Fifth Supplemental Report, Sheet 37.

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Supreme Court. Any conclusions resting upon such an avowed disregard for binding authority of the United States Supreme Court cannot be upheld.

(d) Any expression of the Commission with respect to any inconsistency of control of the Debtor by the St. Joe Paper Company with the public interest are based upon the following findings, all of which are either without warrant of law or are not supported by any substantial evidence in the record:

(i) A construction of the commodities clause of the Interstate Commerce Act contrary to that adopted by the United States Supreme Court, whose decisions the Commission concedes are "binding upon us". (Ante Sub-para. C)

(ii) The statement that:

"the record justifies the conclusion that the St. Joe Company will probably be an important shipper or receiver of construction materials and other traffic." (Sheets 37 and 97)

This statement is without relevance except as it applies to traffic over the lines of the debtor. As so construed, there is no evidence whatever in the record to support such conclusion, and it is contrary to the fact.

(iii) The finding that:

"it is reasonable to expect that they (the duPont Interests) will become importantly interested in shipments of freight over the railroads of the State"

and that through its large banking interests

"would be in a position to influence a great number of shippers to route their shipments over any connecting carrier it may wish to favor."

And that it would be impossible to protect the shipping public or the carriers against these nefarious acts.

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So far as the first statement (Sub-para. ii Ante) is concerned, there is no substantial evidence to support such statement as it applies to the debtor's lines. To what extent the "duPont Interests" may be concerned in the movement of freight in West Florida over lines far removed from he debtor's lines and in no way touching such lines is immaterial to this proceeding and would not justify any conclusions herein by the Commission.

The second statement (Sub-para. iii Ante) is unsupported in the record, is contrary to the expressed policy of the "du-Pont Interests" and is wanting in good faith. Under the Commission's proposed consolidation and merger, the Coast Line would be placed in a highly advantageous position to control interchange traffic with Debtor and, contrary to the situation of the duPont interests, it would have the most substantial financial reason for the effective exercise of such influence. This, in reality, is a most persuasive reason against the public interest in a Coast Line merger with the Debtor; it lacks pertinency in any independent reorganization of the Debtor under an independent reorganization.

Furthermore under section 17 of its revised plan, the St. Joe Company, the reorganized company, the Alfred I. duPont Testamentary Trust and their respective officers and directors, were obligated, so far as lay within their respective powers, to preserve the existing routes and channels and gateways, maintain complete neutrality between connecting lines and equal service and routing via such lines, and refrain from influencing or attempting to influence by any means whatever the routing or movement of traffic north of Jacksonville.

The *only* "evidence" regarding this condition came from counsel for Coast Line who, as a witness, while admitting himself unqualified to express any opinion about it, stated that he was authorized to say that the

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Coast Line believed that the traffic relationship which it has had for many years with the Florida East Coast would be materially and adversely affected to its injury as well as to the public injury by St. Joe control, and that it was not satisfied that any satisfactory protection would be had under section 17 of the plan "for reasons which will be set forth on brief."

This condition is brushed aside by the Commission with the statement at Sheet 36:

> "Whether we could impose such conditions upon a party not subject to the Act * * * is another matter, and no effective means occurs to us of enforcing such conditions. We can, therefore, regard the conditions * * * only a declaration of policy * * * to be self-enforcing in largest part. We cannot accept it as such."

Nothing could better illustrate the bias and prejudice of the majority of the Commission in this proceeding than that statement. If the majority did not know, the able and competent legal staff which the Commission maintains does know that such a condition, if imposed, could and would be enforced by the processes of this Court, just as a similar condition was enforced against a recalcitrant railroad in *Atlantic Coast Line Ry. Co.* v. *United States,* 284 U. S. 288, which the Commission had imposed and with respect to which it says:

> "* * * we have adequate means of policing carrier violations and enforcing the terms of the conditions."[34a]

(IV) Finally, to thwart the equitable owners of the property (the bondholders) the Commission relies upon:

a misapplication of its own decision in *Piedmont & N. Ry., Construction,* 138 I.C.C. 363. In the cited pro-

[34a] Sheet 36, Fifth Supplemental Report.

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ceeding, the party seeking to construct a new railroad actually controlled much of the traffic over the proposed line and its competing railroads. The record herein shows that the "duPont Interests" control no traffic over either the Debtor or its competing lines. Moreover, the reasoning behind the Piedmont decision proceeded upon the theory of protecting existing competing lines against the new proposed line. In this case, the competing line seeks protection, not against the "duPont Interests", but against the Coast Line. The Piedmont decision argues against the proposed plan, not against independent reorganization of the Debtor. The above reasons constitute the sole basis upon which the Commission in its latest Report reflects upon "duPont" control of the Debtor. It is clear, as has already been indicated, that the Commission has stated no sound reasons, supportable in law or upheld by material evidence in the record, that would make inappropriate "duPont" control of the Debtor, except the supposed superior public interest in a general program of railroad consolidations designed to achieve a closely integrated national transportation system "as a national unit", which may not properly and legally disqualify an independent reorganization of the Debtor.

(e) The Commission disregarded the warnings of both the District Court and the Court of Appeals, emphasized upon prior hearings in this cause, that the issue of compatible public interest of an independent reorganization of the Debtor should be determined on its own merits and should not be obscured by preoccupation with a supposed dominant public interest in a supposed public policy favoring railroad consolidation.

(f) The Commission subordinated the issue of compatible public interest in and with an internal reorganization by the Debtor with its misconception of a supposed

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superior public interest in a merger of the Debtor with the Atlantic Coast Line Railroad.

(g) The Commission's conclusions on public interest rest not on any firm conclusion that internal reorganization of the Debtor is incompatible with the public interest but on the ground that a general program of railroad consolidation of railroads and the elimination of stub-end railroads, effected involuntarily under the aegis of Section 77, is so in keeping with the general public interest in the creation of an over-all transportation system, even at the expense of private investors, that independent reorganization of the Debtor must yield to this supposed paramount public interest.

THE PUBLIC INTEREST QUESTION (SO FAR AS THE COAST LINE IS CONCERNED) IS A SHAM

(h) The public interest question was interjected into this proceeding by the Coast Line as a pretext to conceal its real motive. Its real motive, (as found by Judge Sibley and by the Court of Appeals) was that of a competitor coveting and pressing to possess the Debtor Railroad Company against the wishes of substantially all of the equitable (and real) owners of the Debtor.[35] at an unfair and inequitable bargain price,[36] payable in securities that the equitable owners (the bondholders) did not want.[37] The whole record and the Fifth and Sixth Supplemental Reports show that the competitor still has the same motive; and the only difference between then and now is that the equitable owners would now be forced to take less.[38]

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[35] Chief Judge Hutcheson, speaking for the Court of Appeals in the former proceeding said: (179 Fed. 2d 538, 542)

> "The Case we have here is that of one railroad Company coveting, and pressing to possess a competing Debtor railroad company against the wishes of 98% of the equitable owners of the Debtor * * *",

[36] 81 Fed. Supp. 926, 934.

[37] 81 Fed. Supp. 926, 933 and 179 Fed. 2d 538.

[38] See ante, Objections 1, 2 and 3.

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ADDITIONAL OBJECTION THAT THE 1951 PLAN IS UNFAIR AND INEQUITABLE

20. The failure to compensate the first and refunding bondholders for the substantial value of the real estate available for resale, in event of station relocation, contributes to the unfairness and inequity of taking from such bondholders, for the benefit of Coast Line, cash reserve for construction of Miami station under provisions of certified Plan.

WHEREFORE, interveners pray that the Court do reject and disapprove the plan of reorganization certified by the Interstate Commerce Commission in its Fifth and Sixth Supplemental Reports and for such other and further relief as may appear proper in the premises.

Dated at Jacksonville, Florida, this December 20, 1951.

(signed) HENRY P. ADAIR,
1312 Barnett Bank Building,
Jacksonville, Florida.

(signed) DONALD RUSSELL,
Cleveland Law Building,
Spartanburg, South Carolina.

(signed) CLARENCE G. ASHBY,
1312 Barnett Bank Building,
Jacksonville, Florida.
Attorneys for Jessie Ball duPont, Elbert Dent, Edward Ball and The Florida National Bank of Jacksonville, as Testamentary Trustees of the Trust Estate created by the Last Will and Testament and Codicils of Alfred I. duPont.

Endorsed:

"Filed Jan. 1, 1952, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

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Objections of Lynch Interests to Plan of Reorganization, and Claims for Equitable Treatment.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

The Lynch Interests, pursuant to order of this Court dated November 19, 1951, hereby file their detailed and specific objections to the plan of reorganization for the debtor which has been certified to this Court by the Interstate Commerce Commission pursuant to its Fifth Supplemental Report and Order dated July 12, 1951 and affirmed by its Sixth Supplemental Report and Order dated October 25, 1951, together with their claims for equitable treatment.

In substantial part the Commission has adhered to errors in its Third and Fourth Supplemental Reports containing a plan heretofore disapproved. In substantial part, therefore, our objections parallel those filed with respect to that earlier plan.

OBJECTIONS TO COMMISSION'S PROPOSED PLAN.

1. Weight to Be Accorded the Commission's Findings of Value.

(a) The Commission's finding of value, although purporting to be for reorganization purposes, is in essence a

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finding of value for a forced sale that would involve the divestiture of the rights of the Refunding Bondholders to their security or its equivalent, and is not entitled to the presumptions and weight ordinarily accorded a finding of value by the Commission for reorganization purposes.

(b) This Court should examine de novo the issues raised with respect to value for the purpose of ascertaining the validity of the Commission's conclusions.

2. Disregard of and Departure from the Facts of Record.

(a) The Commission's proposed plan is not based upon sufficient findings and is based upon certain assumptions and conclusions unsupported by facts of record.

(b) The Commission's findings and conclusions as to value, price and cash reserves are based upon a misapprehension of, and failure to give proper consideration to, the facts of record.

3. Changed Economic Conditions.

The Commission fixed a valuation for the purpose of sale of the debtor's properties to Atlantic Coast Line of $46,500,000 and in so doing ostensibly increased the valuation made in 1942 for reorganization purposes upon the basis of previously existing conditions by only $6,000,000. Even this increase is illusory since this report disregards Court imposed liens of over $4,600,000. Thus the Commission failed to take into account changes in economic conditions in the territory served by the debtor, as for example, the agricultural development, the growth in population and the development in construction and business generally.

4. Improvements in the Debtor's Properties.

In its findings of value the Commission failed to take into account the evidence showing increased earnings resulting from improvements already effected by the Trustees

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pursuant to the so-called Improvement Program and from other additions and betterments already effected.

From 1941 to 1949 a total of $20,571,935 was spent in improving the properties, and additional amounts have been spent since that time. These improvements include, in effect, the rebuilding of the main line. The Trustees recently had on hand cash and cash investments of over $20,000,000 and in addition had purchased under Court order $3,811,000 of First Mortgage bonds.

5. The Relative Earning Power of the Debtor.

In arriving at its findings of value the Commission failed to take into account the excellent earning showings of the debtor as contrasted with other carriers of comparable size and location.

6. Improved Earning Power Since 1941.

In arriving at its findings of value the Commission failed to take into account the overall improved earning power of the debtor since 1941. The Commission's 1942 report was based upon conditions existing prior to the close of the hearings in 1941. However, the Commission has increased its estimate of prospective earnings (before income taxes) by only approximately $730,000 since that time, thus failing to take into account the evidence showing the remarkably increased earning power of the debtor as contrasted with earlier years.

The Commission likewise failed to take into account a new development occurring between the issuance of its Fifth and Sixth Supplemental Reports, although this was brought to its attention. This important development was the disclosure of plans for a new $10,000,000 cement plant on the lines of the debtor from which the Trustees estimated added revenues exceeding $700,000 annually.

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Objections of Lynch Interests to Plan of Reorganization, and Claims for Equitable Treatment.

7. Disregard of Gordon's Estimates.

Mr. Gordon, a member of the firm of Coverdale & Colpitts, consulting engineers, testified at an earlier date before the Commission and again at the 1949 hearings before the Court on behalf of the Lynch interests. Because of his absence from the country on a mission for the Government surveying the German railway system he was unable to testify before the Commission at the 1950 hearings. However, his testimony and exhibits before this Court were received in evidence before the Commission.

The Commission's references to Gordon's testimony and estimates were superficial and almost casual. It is evident that it relied primarily upon the estimates of an unqualified witness for Atlantic Coast Line.

In addition the Commission refused to make certain adjustments requested by the Lynch Interests as being obvious errors in the Atlantic Coast Line approach, this refusal being accompanied by the observation that the requested adjustments were not supported by a witness presented for that purpose at the hearing.

Moreover, as pointed out by the Commission, it made no allowance for hurricanes, freezes and floods.

In effect, the Commission disregarded the favorable factors and relied upon the unfavorable ones.

Present and prospective conditions support Mr. Gordon's estimates, and it is expected that he will be available at the hearing to be held hereon to bring his data and conclusions up to date.

8. Effect of Commission's Valuation.

The price fixed in the Commission's proposed plan for sale of the debtor's properties to Atlantic Coast Line is based upon the Commission's valuation of the debtor's properties arrived at in the manner aforesaid. Consequently, the price is based upon an improper, illegal and confiscatory value, for the reasons previously set forth.

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Objections of Lynch Interests to Plan of Reorganization, and Claims for Equitable Treatment.

The Lynch Interests have maintained throughout this proceeding that they desired only an equitable, fair reorganization plan for all of the bondholders, but have insisted always that the bondholders should have the right to full satisfaction of their claim from the properties and cash upon which they admittedly have a lien.

The Lynch Interests have heretofore contended that the railroad with all of its assets was worth at least $58,000,000. They now believe that under present conditions it is worth substantially more.

9. Unification Savings.

The price fixed in the Commission's proposed plan fails to take into account and give proper credit to the debtor's properties for their share of savings resulting from unification. Although the Commission found that these savings would amount to between $850,000 and $1,000,000 per annum and that these savings should be credited in equal amounts to the two properties, it is evident from the results reached that in actual practice no credit was allowed the debtor for these savings.

10. Compensation for Loss of Opportunity to Participate in High Earnings.

The price fixed in the Commission's proposed plan fails to provide compensation for the deprival of the Refunding Bondholders' opportunity to recoup their losses out of earnings in periods of high earnings. No serious question exists that under reorganization as an independent property the Refunding Bondholders would receive all of the equity in the properties of the debtor. Under such circumstances the Refunding Bondholders would be able to recoup past losses from, and offset future periods of lower earnings against, the earnings from more prosperous years. Under the Commission's proposed plan for sale of the debtor's properties to Atlantic Coast Line this opportunity

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is lost. The Commission failed to provide adequate compensation for this deprivation of the Refunding Bondholders' rights.

11. Disregard of Court Imposed Liens.

The several orders of this Court creating liens for the benefit of the Refunding Bondholders for moneys used for improvements to the properties require that these liens be paid in cash or cash equivalent. The plan approved by the Commission fails to conform to this requirement, insofar as it relates to liens imposed prior to July 11, 1950. These liens were estimated by the Commission to cover a cash outlay of over $4,600,000 as of that date. The Commission's plan provides that Atlantic Coast Line shall satisfy these liens out of cash and first mortgage bonds otherwise distributable by Atlantic Coast Line direct to the Refunding Bondholders. As a consequence, Atlantic Coast Line pays no more than if the liens were non-existent.

As a result of this disregard of the Court imposed liens, the Commission's purported increase in its present plan of $6,125,000 par amount of bonds over the disapproved plan is offset by the elimination of reimbursement to the bondholders of their cash advances covered by the liens.

12. Cash Reserve for Stations and Facilities.

(a) The plan proposed by the Commission contemplates creation of a cash reserve of $3,000,000 for completion of the Improvement Program despite the fact that it also contemplates sale of the properties to Atlantic Coast Line. The cash reserve for the Improvement Program was originally conceived for the purpose of assuring the availability of cash to complete the Improvement Program and was predicated on the assumption that the equity in the reorganized debtor would vest in the Refunding Bondholders, who contribute the cash. As contrasted with this,

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the Commission's proposed plan contemplates that the Refunding Bondholders will finance the completion of the Improvement Program and that Atlantic Coast Line and not the Refunding Bondholders will reap the benefits of such improvements. Moreover, this is done despite the fact that the furnishing of funds by the Refunding Bondholders would not be essential inasmuch as Atlantic Coast Line would have sufficient cash for that purpose.

(b) The effect of the Commission's proposed plan is to require the Refunding Bondholders to rebuild and rehabilitate properties of the debtor to the extent of $3,000,000 out of funds on which they have a lien, under the guise of improving the security for their bonds, although they are later divested of the opportunity of recouping this enforced investment or of reaping its benefits.

(c) The Commission's proposed plan fails to provide adequate compensation for these enforced cash contributions.

Since 1940 it has been the position of the Lynch Interests that a station should be built in Miami adequate for the future needs of the community, at a location to be agreed upon. Nothing, however, justifies the requirements that this be financed in any part whatever out of cash belonging to the Refunding Bondholders if the properties are to be turned over to Atlantic Coast Line.

13. Working Capital.

The Commission's plan requires setting up an amount for working capital of $1,000,000 cash. Should the property of the debtor be merged with or sold to the Atlantic Coast Line Railroad, the reserve for working capital is unnecessary and the bondholders should not be required to supply it.

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Objections of Lynch Interests to Plan of Reorganization, and Claims for Equitable Treatment.

14. Preoccupation with the Public Interest.

In its preoccupation with the question of the public interest in who shall control and operate the reorganized debtor, the Commission has improperly subordinated and failed to apply, the principles of full priority and of fair and equitable treatment of the Refunding Bondholders.

15. Consequences of the Commission's Proposed Plan.

As a consequence of the foregoing, the Commission's proposed plan, including the finding of value, the price fixed for the proposed sale of the debtor's properties to Atlantic Coast Line and the provision for cash reserves:

(a) departs from applicable legal standards;

(b) is not supported by material evidence;

(c) is tantamount to the exercise of the power of eminent domain in favor of a stranger, without adequate compensation;

(d) would deprive the Refunding Bondholders of their property without due process of law;

(e) violate the requirements of the rule of full priority;

(f) is not fair and equitable in its proposed treatment of the claims of the Refunding Bondholders and fails to afford due recognition to their rights.

CLAIMS FOR EQUITABLE TREATMENT

The Lynch Interests have joined with other bondholders in submitting to the Court an agreed plan for reorganization of the debtor in equity proceedings, a copy of which is annexed to the objections of the First and Refunding Mortgage Trustees being filed herein. The Lynch Interests have joined in this plan because they believe that it

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offers fair and equitable treatment for the minority bondholders, will provide a sound plan of reorganization for the debtor and will offer a sound and practical alternative to what otherwise promises to be further protracted litigation and delay in reorganization. As a means to the accomplishment of a sound, fair and equitable reorganization, the Lynch Interests join with the other bondholder interests in urging disapproval of the Commission's plan, dismissal of these proceedings and return of the properties to the possession and control of the receivers by whom they were operated immediately prior to the commencement of these proceedings, for the purpose of effectuating a foreclosure of the Refunding Mortgage and the carrying out of the plan annexed to the objections of the First and Refunding Mortgage Trustees.

Consequently, as to their claim for equitable treatment, the Lynch Interests respectfully request:

I. That at the hearing to be held before this Court on the objections hereinbefore set forth the Lynch Interests may have the opportunity of offering evidence and of being heard on brief and oral argument in support of their objections and that at the conclusion thereof this Court enter an order finding and concluding that the objections hereinbefore set forth are valid objections, that the Commission has not, in certain respects, followed applicable legal standards, that the Commission has made findings unsupported by material evidence, that the plan does not provide fair and equitable treatment for or afford due recognition to the rights of the holders of Refunding Bonds of the debtor, that it does not accord with the principles of full priority enunciated by the Supreme Court, that it would deprive the Refunding Bondholders of their property without due process of law and that it should not be approved.

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II. That the Court grant the "Motion for Dismissal of the Proceeding" included in the objections of the First and Refunding Mortgage Trustees, in which the Lynch Interests join.

(Signed) J. TURNER BUTLER,

(Signed) FRED N. OLIVER,

(Signed) WILLARD P. SCOTT,
Attorneys for the Lynch Interests.

(Signed) OLIVER & DONNALLY,
Of Counsel.

Dated as of January 2, 1952.

Endorsed:

"Filed Jan. 2, 1952, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

BLEED THROUGH

Objections of Southern Railway System Lines to Plan of Reorganization.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

Come now Southern Railway Company, The Alabama Great Southern Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Georgia Southern and Florida Railway Company, New Orleans and Northeastern Railroad Company, and St. Johns River Terminal Company, hereinafter called "these interveners" or "Southern Railway System Lines," and, pursuant to the order of this court entered and filed herein on November 19, 1951, file these their objections to the modified plan of reorganization of the debtor, approved by the Interstate Commerce Commission in its Fifth Supplemental Report and Order, dated July 12, 1951, in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, 282 I. C. C. ....., which approval was reaffirmed in its Sixth Supplemental Report and Order, in the same proceeding, decided October 25, 1951.

FIRST OBJECTION.

In the said proceeding before the Commission, Atlantic Coast Line Railroad Company intervened as an outsider and proposed a plan for the reorganization of the debtor whereby Atlantic Coast Line Railroad Company would

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acquire the railroad properties of the debtor and merge the same with its own railroad properties. The modified plan of reorganization approved by the Commission contemplates a forced merger or consolidation of the corporate entities, properties and operations of the two said carriers by railroad, without the consent of the debtor or of the equitable owners of its properties, contrary to the intent, purpose and effect of Sec. 5(2) of the Interstate Commerce Act and of Sec. 77 of the Bankruptcy Act. In the said reports and orders, the Commission held that it had the power under Sec. 77 of the Bankruptcy Act to provide for such forced and involuntary merger of one carrier by railroad with another carrier by railroad, although admitting that it had no such power under Sec. 5(2) of the Interstate Commerce Act. These interveners respectfully submit that the Interstate Commerce Act, and particularly Sec. 5(2) thereof, confers no authority upon the Commission or upon any other agency or tribunal, administrative or judicial, to compel such a consolidation or merger of carriers by railroad, their properties, operations or corporate entities, without the consent of each such carrier, and that, properly construed, Sec. 77 of the Bankruptcy Act contemplates no extension of the powers of the Commission with regard to a merger or consolidation of carriers by railroad beyond those conferred by Sec. 5(2) of the Interstate Commerce Act. Wherefore, these interveners show that the said modified plan of reorganization of the debtor was approved by the Commission without authority of law and is illegal.

SECOND OBJECTION.

The Commission, in its said Fifth Supplemental Report and Order made a finding, reaffirmed in its said Sixth Supplemental Report and Order, that the effect of the approved merger of the debtor with Atlantic Coast Line Railroad Company upon the revenues of these interveners, if any, would not adversely affect the public interest; the said finding was made and reaffirmed without material evidence

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to support it, in disregard of substantially uncontradicted evidence to the contrary, in disregard of the preponderant relevant evidence before the Commission and, hence, contrary to legal standards.

THIRD OBJECTION.

The overwhelming preponderance of the evidence before the Commission in said proceeding, now certified to this court, shows that the said forced and involuntary merger of the debtor and its railroad properties and operations with Atlantic Coast Line Railroad Company and its properties and operations, will result in the extension of the railroad lines of Atlantic Coast Line Railroad Company from Jacksonville, Florida, down the east coast of Florida for the length of the present lines of the debtor to Florida City, Florida, will thus give Atlantic Coast Line Railroad Company the power to control for itself and for its lines of railroad much of the traffic now interchanged between the debtor and Southern Railway Company, Georgia Southern and Florida Railway Company, and St. Johns River Terminal Company at Jacksonville, Florida, will deprive Southern Railway Company, Georgia Southern and Florida Railway Company, and St. Johns River Terminal Company of their present opportunity freely to compete with Atlantic Coast Line Railroad Company for such interchange traffic as now interchanged by debtor's independent line and operation, thus depriving those companies and the other Southern Railway System lines of these interveners of large revenues from such present competitive traffic, and as a result will seriously prejudice the public interest in the preservation of said competition, by reason whereof this court should hold that the said modified plan of reorganization is incompatible with the public interest, contrary to legal standards, and illegal.

WHEREFORE, these interveners pray that the court review the said Fifth and Sixth Supplemental Reports and Orders of the Commission and the modified plan of reorganization

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of the debtor therein approved; that it find that the said modified plan of reorganization was approved without legal authority and contrary to law; that the court find that the said reports and orders were entered and the said modified plan of reorganization was approved without material evidence to support it and in violation of legal standards; and that the court find that the said modified plan of reorganization will be incompatible with the public interest. And for all of the foregoing reasons, these interveners pray that the court disapprove the said modified plan of reorganization.

SOUTHERN RAILWAY COMPANY,
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY,
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC RAILWAY COMPANY,
GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY,
NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY,
ST. JOHNS RIVER TERMINAL COMPANY,
Interveners.

(Signed) HENRY L. WALKER,
(Signed) CHARLES CLARK,
(Signed) SIDNEY S. ALDERMAN,
Southern Railway Building,
15th and K Streets, N. W.,
P. O. Box 1808,
Washington 13, D. C.
Attorneys for Interveners.

Of Counsel:
(Signed) CYRIL C. COPP,
1625 Barnett National Bank Bldg.,
P. O. Box 537,
Jacksonville 1, Florida.

Endorsed:
"Filed Dec. 13, 1951, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

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Objections of Seaboard Air Line Railroad Company to Plan of Reorganization.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

To the Honorable the Judges of the District Court of the United States for the Southern District of Florida:

Now comes the Seaboard Air Line Railroad Company, intervenor herein, and pursuant to order of this Court dated November 19, 1951, files its OBJECTIONS to the plan of reorganization of the Debtor, and the findings with respect thereto, as approved and set forth in the Fifth and Sixth Supplemental Reports and Orders of the Interstate Commerce Commission dated July 12, 1951 and October 25, 1951 (herein called the plan and findings) as follows:

1. The plan is not compatible with the public interest.

2. The record certified to this Court by the Interstate Commerce Commission by certificate dated November 7, 1951 does not contain material evidence sufficient to validate the findings in said reports of said Commission as to the compatibility of the plan with the public interest.

POOR COPY

Objections of Seaboard Air Line Railroad Company to Plan of Reorganization.

3. The plan would substantially and adversely affect the public interest in that the vesting of the properties of the Debtor in Atlantic Coast Line Railroad Company as provided in said plan would result in impairment of:

(a) The revenues of other trunk-line railroads now competing at the Jacksonville gateway,

(b) The present competitive conditions, favorable to the public interest, which currently prevail between the trunk-lines at the Jacksonville gateway, and

(c) The ability of the other trunk-line connections of the Debtor to continue their present standards of service to the public.

4. The record certified to this Court by the Interstate Commerce Commission by certificate dated November 7, 1951 does not contain evidence sufficient to constitute a basis upon which this Court can be satisfied, within the meaning of subsection (e) of Section 77 of the Bankruptcy Act as amended, that the plan meets the statutory requirements of said subsection (e).

5. The plan is not a lawful plan under the Bankruptcy Act as amended in that it proposes the vesting in Atlantic Coast Line Railroad Company of properties of the Debtor without first providing full and complete satisfaction of the lawful claims of the various classes of creditors of the Debtor in the order of their respective priorities.

6. The plan is not feasible in that it cannot lawfully be effectuated, over the objection of a single creditor, in so far as it proposes to vest properties of the Debtor in Atlantic Coast Line Railroad Company on the terms stated therein.

BLEED THROUGH

Objections of Seaboard Air Line Railroad Company to Plan of Reorganization.

7. The plan is not fair and equitable within the meaning of Section 77 of the Bankruptcy Act as amended.

8. The plan is not fair and equitable in that it fails to accord to creditors, including holders of the Debtor's First and Refunding Mortgage Bonds, their lawful rights under the principles of law known generally as the rule of the Boyd case.

9. The plan discriminates unfairly against the creditors of the Debtor and in favor of Atlantic Coast Line Railroad Company.

10. The plan does not conform to the law of the land regarding the participation of the various classes of creditors in that, without first lawfully satisfying the claims of creditors, it accords valuable interests in the Debtor's properties to Atlantic Coast Line Railroad Company.

11. The plan, by reason of the terms thereof as to vesting of properties of the Debtor in Atlantic Coast Line Railroad Company, and by reason of the respective treatment therein accorded creditors of the Debtor and Atlantic Coast Line Railroad Company, would constitute a taking of property of creditors of the Debtor without due process of law contrary to the Fifth Amendment to the Constitution of the United States of America.

WHEREFORE, intervenor respectfully prays:

(a) That the Court disapprove the said plan of reorganization;

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(b) That such other and further relief be granted in the premises as shall be just and equitable.

Dated December 28, 1951.

Respectfully submitted,

FLEMING, JONES, SCOTT & BOTTS,
Room 1712, Barnett Bank Building,
Jacksonville, Florida.

WILLKIE, OWEN, FARR, GALLAGHER & WALTON,
15 Broad Street,
New York, N. Y.
Attorneys for Intervenors, Seaboard Air Line Railroad Company.

By (Signed) WALTER H. BROWN, JR.,
Of Counsel.

(Signed) JAMES B. McDONOUGH, JR.,

(Signed) HAROLD J. GALLAGHER,

(Signed) WALTER H. BROWN, JR.,

(Signed) G. W. BOTTS,
Of Counsel.

Endorsed:

"Filed Dec. 31, 1951, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

BLEED THROUGH

Objections of Railway Labor Executives' Association to Plan of Reorganization.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad

IN THE MATTER
of
FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

No. 4827-J.

Comes now the intervenor, Railway Labor Executives' Association, an unincorporated association with its principal place of business in Washington, D. C., on behalf of the great majority of the Debtor's employes, and files its objections to court approval of the modified plan of reorganization certified by the Interstate Commerce Commission in its Fifth and Sixth Supplemental Reports and Orders of July 12 and October 25, 1951. As grounds for said objections the Railway Labor Executives' Association (herein called "the Association") says:

1. The Commission is required by the express terms of Section 77(d) of the Bankruptcy Act to approve only such plans of reorganization as it determines "will be compatible with the public interest". Such determinations and findings by the Commission, under well established law, may not be arbitrarily made but must be based upon substantial evidence of record. The Commission has specifically found and concluded in its Sixth Supplemental Report that "it

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will be compatible with the public interest for the Coast Line to control the debtor's property", and that "the public interest in its broader concept will be better served by integration of the debtor into a larger railroad system than its continued operation as an independent railroad". Such findings and conclusions not only lack substantial support in evidence, but are refuted by overwhelming evidence to the contrary. The subsidiary findings of fact set forth in the Commission's Fifth Supplemental Report, and reaffirmed in its Sixth Supplemental Report, to support the above quoted findings and conclusions, are either specifically contradicted by the preponderance of evidence of record or wholly lacking in evidentiary support. When read as a whole, the record of evidence before the Commission conclusively shows that it is only by disregarding completely factors traditionally recognized as constituting the public interest—the interests and wishes of those persons served by the Debtor, those who own its securities, those who use its facilities, and those who are employed by it and dependent upon it for a livelihood—that the Commission can reach the conclusion that the 1951 plan is "compatible with the public interest". As a result, the basis upon which the Commission approved the 1951 plan is arbitrary and unreasonable because either without support in evidence or contradicted by the evidence which is of record, and therefore productive of an unfair and inequitable plan of reorganization contrary to the express requirements of Section 77(e) of the Bankruptcy Act as a prerequisite for court approval.

2. In its Fifth Supplemental Report the Commission has made a finding, reaffirmed in its Sixth Supplemental Report, "that the interests of the railroad employees affected by the merger will be adequately protected." Said finding was made and reaffirmed without substantial evidence to support it, in disregard of uncontradicted evi-

BLEED THROUGH

dence to the contrary, and in disregard of the fundamental issue before the Commission with respect to the consideration which it is required to give by statute to the interests of the employees.

Under the uncontroverted evidence presented at the hearings conducted by the Interstate Commerce Commission, and according to the findings of the Commission itself in its Fifth Supplemental Report as well as in its previous Third Supplemental Report of April 8, 1947, the plan of reorganization requiring merger of the properties and operations of the Debtor with those of the Coast Line can be accomplished only at the expense of the dismissal from railroad service of a large number of the Debtor's employees or the removal of such employees to distant points on the Coast Line's system as the price of retention of employment by them.

The employees of the Debtor who will be adversely affected if the 1951 plan is consummated have acquired rights of seniority, under effective contracts with the Debtor, which are valuable rights entitling them to a continuing service relationship and progressively improved conditions of employment in ratio of the duration of their various individual periods of service with the Debtor. If the 1951 plan is approved by this Court and consummated, all matters relating to seniority rights of employees will necessarily have to be determined through collective bargaining between the Coast Line and its employees of whom the former employees of the Debtor would be a small minority and unable to take individual action to protect their seniority accumulated in the service of the Debtor.

Moreover, the employees of the Debtor, by virtue of their years of service, have acquired service records and periods creditable toward future retirement annuities under the Railway Retirement Act. The benefits of such annuities will be materially lessened in the event that the said employees are forced to leave railroad service as an ultimate result of the consummation of the 1951 plan.

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Objections of Railway Labor Executives' Association to Plan of Reorganization.

There is no dispute whatsoever that eventually a substantial number of employees will be dismissed from employment as a result of the merger of the Debtor with the Coast Line. The Commission specifically so finds in its Fifth Supplemental Report wherein it states "integration of the two operations would eventually result in a reduction of the present forces of the two railroads by 319 employees or positions."

The Commission's entire answer to the problem of giving adequate consideration to the interests of employees, which the Commission has uniformly recognized to be a part of the public interest, is its provision in the 1951 plan of certain compensatory benefits for limited periods which would be afforded to employees pursuant to the provisions of Section 5(2) (f) of the Interstate Commerce Act or by virtue of similar compensatory benefits as are afforded under the Washington Job Protection Agreement which the Coast Line has agreed to apply. This is not a proper or adequate discharge of the Commission's responsibility in this proceeding with respect to the interests of the employees.

The Washington Job Protection Agreement and Section 5(2) (f) of the Interstate Commerce Act alike contemplate a limited period of compensation for adverse effects suffered by employees through transactions found by the Commission to be in the public interest. The employees of the Debtor, while aware of the value of benefits thus available to them as against complete uncompensated dismissal and displacement, do not prefer such compensation as a substitute for the opportunity to continue in productive employment. They feel that their investment of time and the fact that their livelihood is at stake entitles them to equal consideration with reference to the future of their employer as that which should be accorded to the owners of its securities and to the shippers and travelers who use its services. Their position in this

BLEED THROUGH

regard is supported by the provisions of Section 5(2) (c) of the Interstate Commerce Act, which establishes the factors required to be weighed before any railroad merger or integration can be authorized. Said section provides in part that consideration shall be given to "the interests of the carrier employees affected." It is clear beyond dispute on the face of the Commission's Fifth and Sixth Supplemental Reports that in approving the 1951 plan it did not comply with the foregoing quoted provision of Section 5(2) (c) of the Interstate Commerce Act. Although employee interests were discussed in the report, no weight whatever was given to them by the Commission as an influence upon its decision that the plan would be "compatible with the public interest". The Commission completely disregards its responsibility and contents itself with a finding that the interests of the railroad employees affected will be adequately protected by compensatory benefits. By so doing the Commission has pursued an entirely fallacious method of evaluating the public interest factors arrayed against the Coast Line plan.

What the Commission has clearly done in reaching its conclusions that the 1951 plan is compatible with the public interest is to consider each element of the public interest separately and weigh it in turn against all the evidence produced by the Coast Line in support of its plan. Certainly this is true of the Commission's treatment of the factor of employee interests. Very few, if any, single elements of public interest, standing alone, could justify disapproval or approval of a merger. However, when all of the elements which in the aggregate constitute the public interest converge, as they do in this proceeding, in common opposition to a particular plan of reorganization, the Commission's segregation and separate treatment of each of these elements in juxtaposition to all of the evidence produced by the Coast Line plus the Commission's own ideas of what constitutes a proper railroad system,

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is essentially arbitrary and unreasonable and cannot help but result in an unfair and inequitable plan contrary to the requirements of Section 77 of the Bankruptcy Act.

3. The modified plan of reorganization (herein called the 1951 plan) is contrary to law in that it requires a forced merger or consolidation of the corporate identities, properties, and operations of two carrier corporations without the consent of one of the said corporations or anyone legally empowered to give its consent, and over the protest of "the equitable owners of the property", in violation of the intent and purpose of Section 5(2) of the Interstate Commerce Act and of Section 77 of the Bankruptcy Act. Whether termed a formed merger, a required consolidation, or a compelled transfer, the terminology used by the Commission is unimportant because the result is the same—a complete liquidation of the property of the Debtor and its integration with the Coast Line over the unanimous protest of all of "the equitable owners of the property". Section 5(2) of the Interstate Commerce Act has been uniformly interpreted as precluding the exercise of such authority by the Commission, which the Commission has not denied. Properly interpreted, Section 77 of the Bankruptcy Act permits no exercise of power by the Commission in connection with integration of carriers inconsistent or incompatible with its statutory authority under Section 5(2). Hence, the Association asserts that the 1951 plan now before the Court is contrary to law for the above reason and should be disapproved.

4. Assuming, *arguendo*, that the Commission has the implied power under Section 77 of the Bankruptcy Act to do what it lacks the statutory authority to accomplish under Section 5(2) of the Interstate Commerce Act, and may require a forced integration of the property of the Debtor with the Atlantic Coast Line Railroad over the protest of

BLEED THROUGH

the equitable owners of the Debtor, the Association submits that the intent and purpose of Section 77 of the Bankruptcy Act is that such extraordinary power shall be exercised only under exceptional circumstances where no other plan of reorganization compatible with Section 5(2) of the Interstate Commerce Act is feasible and where the public interest affirmatively requires the exercise of such extreme measures. The Association asserts that the Commission has failed to make a finding that such a circumstance exists in this proceeding, that the evidence of record would not support any such finding, and that, to the contrary, the evidence of record overwhelmingly shows that an internal plan or reorganization, including several proposed in this proceeding but rejected by the Commission, is completely feasible and in the public interest. Hence, the Association asserts that any implied power which the Commission may possess under Section 77 of the Bankruptcy Act to order a forced integration of carriers without the consent of both carriers has been improvidently exercised by the Commission in this proceeding contrary to the extent and purpose of Section 77 and thus should be declared null and void as contrary to law.

WHEREFORE, the Association prays that the Court enter an order finding that the 1951 plan submitted by the Interstate Commerce Commission was approved by the Commission contrary to requirements of law and specifically contrary to the terms of Section 77 of the Bankruptcy Act, that the Court find that the plan approved by the Commission is neither fair nor equitable as required for approval under the terms of Section 77(e) of the Bankruptcy Act,

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and that therefore the modified plan of reorganization should be disapproved.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Intervenor,

By (signed) CLARENCE M. MULHOLLAND,
714 Nicholas Building,
Toledo 4, Ohio.

(signed) EDW. J. HICKEY, JR.
620 Tower Building,
Washington 5, D. C.
Its Attorneys.

Of Counsel:

EDWIN C. COFFEE,
Professional Building,
Jacksonville, Florida.

MULHOLLAND, ROBIE & HICKEY,
620 Tower Building,
Washington 5, D. C.

Endorsed:

"Filed Dec. 29, 1951, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

BLEED THROUGH

Objections of Greater Miami Traffic Association to Plan of Reorganization.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER
of
FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

No. 4827-J.

Come now Greater Miami Traffic Association and the Miami Chamber of Commerce hereinafter referred to as "Miami" and Pursuant to the order of this Court entered and filed herein on November 19, 1951, file these their objections to the modified plan of reorganization of the Debtor, approved by the Interstate Commerce Commission in its Fifth Supplemental Report and Order, dated July 12, 1951, in Finance Docket No. 13170, which approval was re-affirmed in its Sixth Supplemental Report and Order in the same proceeding decided October 25, 1951.

FIRST OBJECTION

The modified plan of reorganization approved by the Commission sets aside from the Debtor's estate as a reserve to be expended for the construction of or a contribution toward the construction of, a new passenger station at Miami, Florida the sum of Two Million Five Hundred Thousand ($2,500,000.00) Dollars. While the Commission recognizes the pressing necessity for a new station at

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Miami, Florida, the amount so set aside by the Commission is clearly inadequate for the purpose. The amount so set aside is unsupported by the evidence. The sum of at least Four Million Three Hundred Fifty-three Thousand One Hundred Fifty-six ($4,353,156.00) Dollars included in the trustees program for this station should have been set aside as a cash reserve. Because of the increased costs of construction prevailing since the testimony of the trustees was placed in the record, probably even this amount is insufficient for the construction of the required facilities.

SECOND OBJECTION

The modified plan of reorganization unjustifiably rejects the application of the Florida Railroad and Public Utilities Commission filed with the Interstate Commerce Commission after the issuance of its Fifth Supplemental Report and Order (and supported by the reply thereto of Miami) praying that the Interstate Commerce Commission enter its order either approving the plan for the relocation of the passenger station facilities of the Debtor at Miami as found and ordered by the Florida Commission in its Order No. 1567, or holding that approval thereof by the Interstate Commerce Commission is not necessary.

THIRD OBJECTION

The Interstate Commerce Commission in its modified plan of reorganization found that the merger of the Debtor with the Atlantic Coast Line Railroad Company would be compatible with the public interest. Such a finding disregards the substantial weight of the evidence introduced by representatives of shippers and receivers of freight on the Debtor railroad, by representatives of communities located on the lines of the Debtor and by various public representatives affected. The finding is based on no substantial material evidence and is contrary to recognized legal standards.

BLEED THROUGH

Objections of Greater Miami Traffic Association to Plan of Reorganization.

FOURTH OBJECTION

The modified plan of reorganization approved by the Commission approves a forced merger of the Debtor with the Atlantic Coast Line Railroad Company. The Interstate Commerce Commission is without authority to provide for such a forced merger under the Interstate Commerce Act and under Section 77 of the Bankruptcy Act. Such a forced merger, as distinguished from an independent reorganization of the Debtor, in the face of the expressed opposition of the equitable owners of the Debtor and of the vast majority of the public interests represented in the proceedings is, in any event, arbitrary, unreasonable and contrary to law.

For the foregoing reasons, your Intervenors pray that the Court disapprove the said modified plan of reorganization.

GREATER MIAMI TRAFFIC ASSOCIATION,
MIAMI CHAMBER OF COMMERCE,
Intervenors.

(Signed) JEROME C. HOFMAYER,
1502 duPont Building,
Miami, Florida.
Attorney for Greater Miami Traffic Association and Miami Chamber of Commerce.

Endorsed:

"Filed Dec. 29, 1951, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

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Objections of W. R. Huggins, *et al.*, to Plan of Reorganization.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

Come now W. R. Huggins, R. T. Jeffries, W. T. Keebler, R. L. Musselwhite, H. K. North, John P. Smart and O. R. Stroman, interveners, in behalf of themselves and in behalf of other employees of the Florida East Coast Railway Company likewise situated, by their undersigned attorney, and, pursuant to the Order of this Court entered and filed herein on November 19, 1951, file these, their objections to the modified plan of reorganization of the debtor, approved by the Interstate Commerce Commission in its Orders of July 12, 1951, and October 25, 1951, upon the following grounds:

FIRST OBJECTION

Interveners object to the confirmation of the modified plan of reorganization certified by the Interstate Commerce Commission by its Orders of July 12, 1951, and October 25, 1951, because the same is unfair, inequitable, unlawful and illegal for the following reasons:

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Objections of W. R. Huggins, et al., to Plan of Reorganization.

1. The Interstate Commerce Commission's refusal to recognize the "full value" of the Court's "Lien Orders" reduces the ultimate bondholders' equity to an amount less than heretofore ever considered as just and fair by all parties at interest in these proceedings.

2. The modified plan proposes that the Atlantic Coast Line shall "take" the entire debtor's property for a consideration of $46,500,000, or a real consideration of only $42,500,000, (the Coast Line gives $4,000,000 and takes $4,000,000) with a cash market value of only $39,694,000—the Commission's own idea of the value of the Coast Line "paper" to be issued. Such an amount is less than one-half the true value of the physical assets alone, and certainly far less than the junk value of the properties. Such expropriation of the debtor's property as the modified plan proposes is unjust, unfair, inequitable, unlawful and illegal.

SECOND OBJECTION

1. The modified plan of reorganization does not comply with the decision and direction of the District Court, or of the Circuit Court of Appeals, requiring "more careful consideration and recognition of the rights and equities of the bondholders".

2. The modified plan of reorganization does not give a proper or due consideration to the Employees' Alternate Plan of Reorganization, which does provide a full and complete recognition of the rights and equities of the bondholders, both the majority group and the minority groups of bondholders.

3. The Modified plan of reorganization violates the Circuit Court of Appeals' Mandate that the Commission work out a fair and equitable plan of reorganization.

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4. The modified plan of reorganization is unlawful and illegal, being based upon the finding that "the interest of the railroad employees affected by the merger will be adequately protected", which finding is not supported by a single word or fact of evidence and is wholly contrary to the overwhelming evidence to the effect that hundreds of employees of the debtor will be discharged, demoted, or compelled to move their homes and families at great financial loss and unnecessary personal distress and suffering.

THIRD OBJECTION

1. The modified plan of reorganization is both unlawful and illegal in that the Commission has attempted the use of power under Section 77 of the Bankruptcy Act to provide for a forced and involuntary merger of one railroad carrier with another railroad carrier, although admitting that it has no such power under Section 5 (2) of the Interstate Commerce Act. These interveners respectfully submit that the Interstate Commerce Act, and particularly Sec. 5 (2) thereof, confers no authority upon the Commission or upon any other agency or tribunal, administrative or judicial, to compel such a consolidation or merger of carriers by railroad, their properties, operations or corporate entities, without the consent of each such carrier, and that, properly construed, Sec. 77 of the Bankruptcy Act contemplates no extension of the powers of the Commission with regard to a merger or consolidation of carriers by railroad beyond those conferred by Sec. 5(2) of the Interstate Commerce Act. Wherefore, those interveners show that the said modified plan of reorganization of the debtor was approved by the Commission without authority of law and is illegal.

WHEREFORE, these interveners pray that the Court review the said Fifth and Sixth Supplemental Reports and Orders of the Commission and the modified plan of reorganization of the debtor therein approved; that it find that

BLEED THROUGH

the said modified plan of reorganization was approved without legal authority and contrary to law; that the Court find that the said reports and orders were entered and the said modified plan of reorganization was approved without material evidence to support it and in violation of legal standards; and that the Court find that the said modified plan of reorganization will be incompatible with the public interest. And for all of the foregoing reasons, these interveners pray that the Court disapprove the said modified plan of reorganization.

(Signed) W. R. Huggins,

(Signed) R. T. Jeffries,

(Signed) W. T. Keebler,

(Signed) R. L. Musselwhite,

(Signed) H. K. North,

(Signed) John P. Smart,

(Signed) O. R. Stroman,
Interveners.

(Signed) John G. Thompson,
1301 A. I. duPont Bldg.,
Miami 32, Florida,
Attorney for Interveners.

Of Counsel:

Smathers, Thompson, Maxwell & Dyer,
1301 A. I. duPont Bldg.,
Miami 32, Florida.

Endorsed:

"Filed Dec. 31, 1951, Jacksonville, Fla.
Edwin R. Williams, Clerk."

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Objections of Florida Railroad and Public Utilities Commission to Plan of Reorganization.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

JACKSONVILLE DIVISION

In Proceedings for the Reorganization of a Railroad

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J Bkpt.

Come now Wilbur C. King, Jerry W. Carter and Richard A. Mack, as members of and constituting the Florida Railroad and Public Utilities Commission, by their attorneys, and object to the modified plan of reorganization for the debtor approved by the Interstate Commerce Commission in its Fifth Supplemental Report and Order dated July 12, 1951 as affirmed in its Sixth Supplemental Report and Order dated October 25, 1951, and for detailed and specific objections thereto assert the following:

OBJECTION No. 1

Because said plan sets aside from the debtor's estate as a reserve to be expended for the construction of, or a contribution toward the construction of, a new passenger station in Miami, Florida, cash in the sum of only $2,500,000, whereas the sum set aside for such purpose should be at least an amount sufficient to construct the passenger station facilities at Miami referred to in Exhibit 329, a "Statement

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giving a breakdown of charges to Capital for Stations and Terminal Facilities", in Finance Docket 13170, which said Exhibit 329 briefly describes such station and the charges to capital therefor as follows:

"Miami: 120′ x 256′ building on N. E. 20th Terrace site, white and colored waiting rooms, ticket office, restaurant, parcel locker check room, service offices and toilets on first floor, offices and toilets on second floor. Station and train concourse. Detached 60′ x 260′ baggage room with telegraph, Pullman Co. and other offices and locker rooms on second floor. Head house station layout with 8 platform tracks. Sheds over passenger platforms. Power Plant, interlocking and necessary auxiliary facilities $5,528,156
Less Salvage 1,175,000
$4,353,156."

OBJECTION No. 2

Because said plan rejects without justification the application of the Florida Commission filed with the Interstate Commerce Commission praying that the latter Commission enter its order either approving the plan for the relocation of the passenger station facilities of the debtor at Miami as found and ordered by the Florida Commission in its Order No. 1567, or holding that approval thereof by the Interstate Commerce Commission is not necessary.

The aforesaid modified plan of reorganization found that a new passenger station for the debtor at Miami is a "pressing necessity", the consequent necessity for deciding, in the public interest, the question presented to the Interstate Commerce Commission by the aforesaid application of the Florida Commission is evident from the record in Finance Docket 13170, and in failing to decide

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such question the modified plan is incompatible with the public interest.

(signed) LEWIS W. PETTEWAY,

(signed) GUYTE P. MCCORD, JR.,

(signed) D. FRED MCMULLEN,
Attorneys for Florida Railroad and Public Utilities Commission.

Endorsed:

"Filed Dec. 28, 1951, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

BLEED THROUGH

Motion by Party in Interest to Dismiss the Reorganization Proceeding.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

Comes now the undersigned and respectfully represents to the Court as follows:

(1) That the undersigned is the bona fide owner and holder of $3,000 principal amount of First and Refunding Mortgage 5% Bonds of the Debtor, and as such is a party in interest within the meaning of sub-section (e) and sub-section (g) of Section 205, Title 11, United States Code Annotated, formerly Section 77 of the National Bankruptcy Act; and

(2) The undersigned assumes that the Judge of this Court in the exercise of his wise discretion, and with due and appropriate regard for the proper rights and interest of the Creditors of the Debtor will disapprove (as he ought to do) the pending Plan of Reorganization certified by the Interstate Commerce Commission.

WHEREFORE the undersigned, (in the undersigned's own behalf and not in behalf of anyone else) moves the said Judge as follows, viz.:

(a) That said Judge, upon the disposal of said Plan of Reorganization do enter an order:

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Motion by Party in Interest to Dismiss the Reorganization Proceeding.

(i) dismissing these Reorganization Proceedings following the disapproval of said Plan of Reorganization, and do not refer such Reorganization proceedings back to the Interstate Commerce Commission for any further action by said Commission,

(ii) directing that the said Florida East Coast Railway Company be reorganized in Consolidated Cause #757-Equity, (Bankers Trust Company, et al. *vs.* Florida East Coast Railway, now pending in this Court) under such Plan of Reorganization as shall be fair and equitable.

(b) That the undersigned shall have such other and further relief that the undersigned shall be entitled to in the premises.

Dated this 24th day of January, 1952.

Name /s/ R. E. McNeill, Jr.,
Address 52 Wayside Place,
Montclair, N. J.

Endorsed:

"Filed January 25, 1952,

Jacksonville, Fla.,
Edwin R. Williams, Clerk."

BLEED THROUGH

Opinion of Court.

(Filed March 11, 1952)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN BANKRUPTCY.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827 J. Bankruptcy

On objections of creditors and others to plan of railroad reorganization certified by Interstate Commerce Commission under Sec. 77 of the Bankruptcy Act, 11 U. S. C. A. 205.

Objections sustained. Petition for reorganization dismissed.

STRUM, Circuit Judge:[1]

Florida East Coast Railway Company operated under an equity receivership in this Court from August 31, 1931, until January 25, 1941, when a reorganization proceeding was instituted under Section 77 of the Bankruptcy Act, 11 U. S. C. A. 205, as amended.

Four plans of reorganization have been proposed by the the Interstate Commerce Commission. The first and third were rejected by this Court. The second was in effect withdrawn by the Commission. The matter is now before the Court for consideration of the fourth amended plan, approved by the Commission on July 12, 1951, certified to the Court on October 25, 1951, and taken up by this Court for consideration on February 4, 1952.

(1) Sitting as District Judge, *pro hac vice*.

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As of January 25, 1941, when the petition for reorganization was filed, the debtor railway's capitalization, plus Receivers' obligations, was:

Capital stock	$37,500,000.00
First Mortgage 4½% bonds, due January 1, 1959	$12,000,000.00
First and Refunding Mortgage 5% bonds, due September 1, 1974	$45,000,000.00
Equipment Trust Certificates, Series "H" 4½%	$ 180,000.00
	$94,680,000.00
Receivers' Equipment Trust Certificates, Series "I" 3%	$ 1,116,000.00
TOTAL	$95,796,000.00

Since January 25, 1941, the reorganization Trustees have purchased and now own $3,811,000 of the $12,000,000 First Mortgage 4½% bonds, leaving actually outstanding of that issue $8,189,000. They have also retired Equipment Trust Certificates, Series "H", "I", and "J". Additional Equipment Trust Certificates, Series "K" have been issued, however, and three new Conditional Sales Agreements for the purchase of equipment have been executed, so that as of December 31, 1950, the capitalization and secured obligations of the debtor were:

Capital Stock	$37,500,000.00
First Mortgage 4½% Bonds, due January 1, 1959 (originally $12,000,000)	$ 8,189,000.00
First and Refunding Mortgage 5% bonds, due September 1, 1974	$45,000,000.00
Equipment Trust Certificates, Series "K", (originally $2,060,000)	$ 1,648,000.00
Conditional Sales Agreement, dated March 15, 1945 (originally $2,622,531)	$ 886,269.27

BLEED THROUGH

Conditional Sales Agreement, dated March 15, 1946 (originally $1,692,637.77)	$ 444,533.00
Conditional Sales Agreement, dated July 15, 1947 (originally $3,842,182)	$ 2,214,440.00
Total	$95,882,242.27

All sums, principal and interest, due on the 4½% First Mortgage, as well as on all equipment obligations, have been paid in full when due. The debtor's financial difficulties stem primarily from the requirements of its 5% First and Refunding bonds, which have been in default since September 1, 1931. As of September 1, 1951, defaulted interest thereon aggregated $37,125,000, seven coupons,[2] aggregating $7,875,000, having been paid from time to time.

These bonds were issued in 1925, primarily to pay for double tracking the railway from Jacksonville to Miami in an effort to meet the extraordinary transportation requirements of the Florida "boom" of the middle 1920's, during which freight piled up in Jacksonville until the railroad storage tracks overflowed and an embargo upon further shipments became necessary. When the "boom" collapsed, the debtor railway—along with many other businesses—soon found that it had greatly over-expanded and could not meet its fixed charges. This produced the 1931 equity receivership. The nationwide economic "depression" of 1929-1937 also greatly reduced the debtor's earnings.

The first plan of reorganization, certified to the Court by the Interstate Commerce Commission on August 10, 1942 (252 I. C. C. 423, 731) was a simple, normal plan of internal reorganization which held the existing capital stock and unsecured indebtedness to be without value, and recognized the 5% bondholders as the equitable owners of the property, subject to the first mortgage and equipment

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(2) Coupons maturing September 1, 1931, March 1, and September 1, 1932, March 1 and September 1, 1933, and March 1, and September 1, 1934. The oldest unpaid coupon was due March 1, 1935.

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obligations. The property was valued at $37,000,000, to be capitalized as follows:

Equipment Notes	$ 1,992,000.00
First Mortgage Series "A" bonds, to be issued to holders of existing 4½% First Mortgage bonds	$12,000,000.00
General Mortgage Series "A" bonds, to be issued to holders of existing 5% First and Refunding bonds	$ 4,500,000.00
Common Stock (no par) 450,000 shares, to be issued to holders of existing 5% First and Refunding bonds	$18,508,000.00
Total capitalization	$37,000,000.00

to which could be added, if necessary, not exceeding $6,000,000 in additional first mortgage bonds for capital expenditures. Maximum permissible capitalization under the first plan was therefore $43,000,000.

This plan provided that the First Mortgage 4½% bondholders would receive new First Mortgage bonds equal in amount and seniority to their former holdings, while the First and Refunding 5% bondholders would receive, for each $1,000 bond, $100.00 of new General Mortgage bonds (junior to the First Mortgage bonds) and 10 shares of no par value stock. Existing interests in the property would thus be equitably preserved in the then owners by a ratable distribution to them of the new securities, the face value of their interest being scaled down to conform to the then actual value of their equity in the property.

This plan was rejected by the Court, October 19, 1943, not because of any objection inherent in the plan itself, but because a sum of approximately $17,000,000 in cash or its equivalent had accumulated in the hands of the reorganization trustees while the Commission had the matter under consideration from January 25, 1941, to August 10, 1942. This sum was unallocated by the plan. Being of the

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opinion that this sum should not be left as a floating surplus, but should be specifically allocated, the Court rejected this plan for that reason alone and returned the matter to the Commission for further consideration, anticipating that substantially the same plan would be re-submitted with these funds appropriately allocated. In Re: Florida East Coast Ry. Co., 52 Fed. Supp. 420.

On November 8, 1944, a petition was filed by a group of 5% bondholders, referred to as the Lynch interests, joined in by the Atlantic Coast Line Railroad Company, proposing a new plan of reorganization whereby Atlantic Coast Line would secure control of Florida East Coast by a forced sale to A. C. L. of 60% of the new common stock of the reorganized Company. This proposal was unanimously rejected by the Commission, for the reason, amongst others, that the guaranties and cash expenditures to be made by Atlantic Coast Line would result in an unwise increase in its fixed charges.

Instead, on January 8, 1945 (266 I. C. C. 151-193), the Commission unanimously approved a second plan proposing a simple, workable internal reorganization along the general lines of the first, which recognized and continued the 5% bondholders as the equitable owners of the property, no drastic change in ownership being suggested, although it was then known to the Commission that the duPont interests, acting through its affiliate St. Joe Paper Company, owned more than 50% of the 5% bonds. This plan proposed payment in full of the $12,000,000 first mortgage out of surplus cash on hand, as suggested by the Court in its opinion rejecting the first plan (52 Fed. Supp. 420), also setting aside $8,700,000 for cash requirements upon reorganization, and for betterments and improvements. Valuation of the property was increased from $37,000,000 to $40,500,000, to be capitalized as follows:

New First Mortgage 75-year Income bonds	$20,250,000.00
Common Stock 202,500 shares (no par value)	$20,250,000.00

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These securities were to be distributed, together with the remaining cash on hand, pro rata to the First and Refunding Mortgage bondholders. In addition to the cash, each First and Refunding Mortgage Bondholder would receive for each $1,000 bond, $450.00 principal amount of new First Mortgage Income bonds and 4½ shares of stock. Capital stock theretofore outstanding, as well as unsecured claims, were again found to be without value. A five-year voting trust was set up as to stock to be issued to St. Joe Paper Company in order to ensure what the Commission thought would be desirable protection for minority stockholders in order to safeguard them from any abuse by the majority.

Thus it appears that at least as late as January 8, 1945, the Commission did not favor Atlantic Coast Line control, but apparently regarded an internal reorganization, with a voting trust imposed on the duPont majority interest, to be compatible with the public interest and a feasible plan for the future operation of F. E. C.

For the reasons hereafter stated, this second proposed plan of internal reorganization, though approved by the Commission, was never finally certified by the Commission to this Court so that the Court could consider it on its merits. Instead, it was superseded by a third and fundamentally different plan, usually called the Atlantic Coast Line plan, which for the first time proposed that control be taken from the present owners and vested in A. C. L. This plan came about as hereafter stated.

Petitions for modification were filed to the second plan, pursuant to which the Commission, on July 20, 1945, re-opened the whole matter for the taking of further evidence and for the proposal of other plans by the parties in interest. Until it unsuccessfully petitioned for control on November 8, 1944, Atlantic Coast Line was a stranger to these proceedings, and until October 18, 1945, it was neither a stockholder nor creditor of Florida East Coast and had no proprietary interest of any nature therein. There was no affiliation nor "interlocking" of interest or

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control between the two railways. On October 18, 1945, however, Atlantic Coast Line purchased unsecured claims against the Florida East Coast aggregating $1,900,000 which claims the Commission had twice previously held to be without value because it was then thought there was no unencumbered property out of which to satisfy the same.[3] Atlantic Coast Line paid $5,000 for these claims, and agreed with the former owners thereof to pay them an additional fifty per cent of whatever might be realized thereon, less expenses.

As such unsecured creditor, Atlantic Coast Line on November 6, 1945, submitted to the Commission a plan which proposed a "merger" of Florida East Coast with Atlantic Coast Line. Under this plan ownership and control of Florida East Coast would have passed to Atlantic Coast Line, which would have thereafter operated the road, and Florida East Coast as an independent entity, would cease to exist. This plan valued the property at $40,500,000, so capitalized that secured F. E. C. creditors would receive about 9% of the principal of their claims in new cash to be supplied by A. C. L. ($4,125,000) plus any "free cash" not needed for other purposes; the remainder in A. C. L. securities, the details of which will be stated later. Existing F. E. C. creditors would thus become security holders in A. C. L., and no longer creditors of F. E. C. The existing $12,000,000 F. E. C. first mortgage would be paid off in cash from accumulated earnings of F. E. C.

By its order of April 8, 1947, the Commission approved the Atlantic Coast Line (third) plan, with some modifications, and by a 6 to 5 vote certified the same to this Court for consideration on March 25, 1948, 267 I. C. C. 295; *idem* page 729.[4]

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(3) These claims later became of substantial value, however, when it was held by this Court that there were unencumbered assets, later valued by the Commission at $1,177,356, available to pay these and other unsecured claims.

(4) Five Commissioners vigorously dissented, advocating a simple internal reorganization along the general lines of the first and second plans. The Commission's trial examiner, who had made a long and painstaking investigation of the facts, also recommended an internal reorganization.

This plan came on for consideration before this Court on January 10, 1949, objections thereto having been filed by substantially all the 5% bondholders, including the Lynch interests who originally proposed Coast Line control.[5] On January 22, 1949, the Court rejected this plan as unjust and inequitable, and referred the matter back to the Commission for further efforts to make a proper plan. 81 Fed. Supp. 926. The order rejecting this plan was affirmed on appeal, January 17, 1950, 179 Fed. (2) 538, one judge dissenting. Certiorari was denied by the Supreme Court, April 3, 1950 (339 U. S. 929, 94 L. Ed. 1349).

Of this third or A. C. L. plan, this Court, speaking through Circuit Judge Sibley, then sitting here as District Judge *pro hac vice*, said:

> "The gist of the matter is that, because the majority of the Commissioners think it is not compatible with the public interest for St. Joe Paper Company to own a controlling amount of voting stock in the reorganized East Coast railroad if reorganized in the simple and natural manner several times certified by the Commission unanimously giving all the refunding bondholders a pro rata share of its common stock, all of them must surrender the investment they have chosen and lawfully own in the East Coast property and must take in return an investment which most of them do not desire to own and do not think is an equivalent. • • •
>
> "I conclude also that the plan is not fair and equitable and does not afford due recognition to the rights of the refunding bondholders. These bond-

(5) Objections were also filed by Railway Labor Executives' Association representing the organized employees of F. E. C., Southern Railway Company, Seaboard Air Line Railway Company, and New York Trust Company as trustee under Equipment Trust "D". The only creditor assenting to the plan was a Deposit Committee then representing $572,400.00 (1.3%) out of $45,000,000.00 of the First and Refunding bonds, the members of which Committee are on friendly business terms with A. C. L. This Committee now represents only $437,900.00 of 5% bonds,—slightly less than 1%, although at one time it represented about $30,000,000.00. Its representation has been steadily declining since about 1944.

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holders originally had a general mortgage covering railroad property, franchise, and income, with a right to a receivership on default to collect the income, and to a decree of foreclosure and a judicial sale; and the right to bid for and buy the property if they wished and made the highest and best bid. * * *

"This railroad property is in equity the property of the refunding bondholders who replace practically the stockholders as owners. On a reorganization they would naturally receive the common stock pro rata. All the plans approved by the Commission save the present one so provided, * * *. But the Commission, within its province, though by a bare majority, has held that the public interest prevents St. Joe Paper Company from holding a majority of common stock, and therefore proposes that no bondholder can have the common stock he desires and expected, but all must sell their equitable rights in this property, and must take in exchange that which is not money and which they do not desire to have. This seems to me to be unfair, inequitable, and not a due recognition of their rights. In Re: Florida East Coast Ry. Co., 81 Fed. Supp. 926.

The Court of Appeals, speaking through Chief Judge Hutcheson, held that the statute authorized the commission to require a forced merger in connection with a Section 77 reorganization, but affirmed Judge Sibley's judgment that the merger proposed by the third plan was intrinsically unjust and inequitable. The Court of Appeals, one judge dissenting, said:

"The case we have here is that of one railroad company coveting, and pressing to possess, a competing debtor railroad company, against the wishes of 98 per cent of the equitable owners of the debtor and over their violent objections, that consummation of

the plan will result in depriving them of their property without just compensation. • • •

"The Congress brigaded commission and court in railroad reorganization proceedings, not because the Congress has determined to paramount the public interest to the point of taking the property of the debtor and of its security holders without just compensation and by administrative fiat, but for quite contrary reasons. By a plan which combines the functions and efforts of commission and court, the Congress went about to secure, not the destruction or subordination of the private interests of security holders of the debtor to the interest of the public in its future control, but the protection of private and public interest without sacrifice of each to the other. • • •

"It did this by confiding final approval to the courts, and requiring the court to be satisfied, before approving it, that the plan 'is fair and equitable and affords due recognition to the rights of each class of creditors and stockholders.' • • •

"Reviewing this record, therefore, in the light of these principles, taking note of its tremendous over-emphasis on and the preoccupation of the Commission with the struggle on the one hand of the St. Joe Paper Co., and on the other, of Coast Line for control of the debtor, with its subordination of the primary question of the legal and equitable rights of the bondholders as such, we are left in no doubt that the trial judge was right, for these reasons and for the other reasons that he gave, in disapproving the plan as not fair and equitable and not affording due recognition to the rights of the bondholders. Indeed, we are of the opinion that a contrary holding could not have been sustained and that the order declining to approve the plan and referring the proceeding back to the Commission must be

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affirmed." • • • (Atlantic Coast Line *v.* St. Joe Paper Co., 179 Fed. (2) 538).

Notwithstanding the clear language of these opinions rejecting the third plan, and over the almost unanimous objection of the 5% bondholders, the employees, shippers, and other parties, the Commission approved July 12, 1951, by a 7 to 3 vote,[6] and certified to the Court on October 25, 1951, a fourth plan which is fundamentally the same as the third, but with an apparent $6,000,000 increase in valuation which will be discussed later.

Absorption of Florida East Coast by Atlantic Coast Line, and elimination of the former as an independent carrier, is the dominant characteristic of the fourth plan, as it was also of the third. The Commission appears to have begun its labors upon the postulate that F. E. C. must be merged with A. C. L. regardless of objections, after which all other matters were shaped to conform to that objective.

Under the Fourth plan the $12,000,000 First Mortgage is to be paid in full. As in the rejected third plan, the 5% bondholders of Florida East Coast would receive in cash about 9% of the principal of their claims. For the remaining 91%, these bondholders, over their objection, would be forced to give up their present securities in F. E. C., which they lawfully own and desire to retain, and would become involuntary security holders in Atlantic Coast Line, in the management of which they would have no voice, and in which they do not wish to invest their capital. Thus the fourth plan retains the basic inequities for which the third plan was rejected.

Under the fourth plan, the property is valued at $46,500,000 instead of $40,500,000 under the third plan,

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(6) The three dissenting Commissioners again advocated a plan of internal reorganization which recognizes and continues the 5% bondholders as owners of the property.

with a corresponding increase in new securities to be received by present F. E. C. security holders. This apparent increase of $6,000,000 in valuation, however, will not improve the security holders' position over the rejected third plan, for the reasons hereafter stated.

This fourth plan is vigorously opposed by more than 99% of the First and Refunding bondholders. It is favored only by Atlantic Coast Line, which has no property interest in F. E. C. other than its recently acquired unsecured claim constituting about 2% of the total F. E. C. indebtedness, and by less than 1% of the First and Refunding bondholders, represented by a Committee enjoying friendly business relations with A. C. L.

The identical similarity of the third and fourth plans as to the "merger" of F. E. C. into A. C. L. has been pointed out. The close fiscal similarity of the two plans is readily apparent from the following comparisons:

Capitalization

	3rd Plan	4th Plan
Cash, new money supplied by ACL	$ 4,125,000	$ 4,000,000
ACL Divisional First Mortgage 3½% fixed interest bonds, secured by first mortgage on former F. E. C. property	13,500,000	—
ACL Divisional First Mortgage 3¾% bonds, secured by first mortgage on former F. E. C. property	—	14,000,000
ACL Divisional Income 4½% bonds secured by junior mortgage on former F. E. C. property	7,875,000	13,500,000
ACL 4% Preferred Stock (par value)	9,000,000	9,000,000
ACL Common Stock	6,000,000	6,000,000
	$40,500,000	$46,500,000
Equipment obligations	2,829,177	5,314,086
Total Capitalization	$43,329,177	$51,814,086

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Distribution

The amount of cash and A. C. L. securities, at their *par* value, to be awarded First and Refunding Mortgage bondholders as payment in full for each $1,000 bond, principal and accrued interest, is:

	3rd Plan	4th Plan
Cash	$ 91.67[7]	$ 84.69
ACL Divisional fixed interest First Mortgage bonds	300.00	300.00
ACL Divisional Junior Income bonds	175.00	300.00
ACL Preferred Stock	200.00	200.00
ACL Common Stock	133.33	133.33
Total Par Value	$900.00	$1,018.02

Of course the market values of these securities will be far less than their par value.

This Court fully recognizes the doctrine that in railroad reorganizations under Section 77, Congress "placed leadership in the Commission, subject to a degree of participation by the Court." Thus, valuation of the property, the amount and character of capitalization, and the determination of whether or not the plan is compatible with the public interest, are confided to the Commission. Its determination of these matters is conclusive when reached "with material evidence to support the conclusion and in accordance with legal standards."[8] The Court is not authorized to independently value the property, nor to formulate a plan of its own, nor to review the Commission for mere

(7) The $91.67 cash per $1,000 bond under the third plan is the $4,125,000 new money to be supplied by Atlantic Coast Line, divided amongst the 45,000 holders of $1,000 First and Refunding Mortgage 5% bonds. The $84.69 minimum cash under the fourth plan is the cash equivalent, similarly divided, of the $3,811,000 First Mortgage bonds purchased by the reorganization trustees with funds which would otherwise have been available for payment of 5% bond interest. The remaining $189,000 of the $4,000,000 to be contributed by A. C. L. is to be applied in payment of court imposed liens, hereafter discussed in the opinion. Under the fourth plan there will be additional cash available for distribution to the 5% bondholders, but relatively small in amount.

(8) *Ecker* v. *Western Pac. R. Corp.*, 318 U. S. 448, 87 L. Ed. 892; *R. F. C.* v. *D. & R. G. W. R. Co.*, 328 U. S. 495, 90 L. Ed. 1400; *Institutional Investors* v. *Chicago M. & St. P. Ry. Co.*, 318 U. S. 523, 87 L. Ed. 959; *Palmer* v. *Massachusetts*, 308 U. S. 79, 84 L. Ed. 93.

error. But the determination by the Commission of the matters above mentioned must be in accordance with the mandates of the statute. Whether or not, in valuing the property and in determining the public interest, the Commission has acted upon substantial evidence and in accordance with statutory directions is open to judicial review. *Ecker* v. *Western Pac. R. Corp.*, 318 U. S. 448, 477, 87 L. Ed. 892, 934.

It is also the settled law of this case that a "forced merger", that is, in the language of Chief Judge Hutcheson in 179 Fed. (2) at page 544: "a merger over the objections of the debtor and all its creditors, may be lawfully certified to the Court and lawfully confirmed by it." But the plan of merger must be fair and equitable, must afford due recognition to the rights of each class of creditors and stockholders, and must conform to the law of the land regarding the participation of the various classes of creditors and stockholders. Such is the mandate of the statute. Section 77(e), 11 U. S. C. A. 205(e). The duty and responsibility of determining whether or not the plan conforms to these statutory requirements is committed to the Courts. This is not a mere perfunctory duty. It places upon the Courts a most exacting responsibility, in the discharge of which they exercise an informed but independent judgment.[9]

After a careful analysis of the Commission's fifth and sixth supplemental reports, and after hearing the evidence and arguments before this Court, consuming eight days, the Court is clearly of the opinion that the proposed fourth plan is neither fair nor equitable, nor does it afford due recognition to the rights of the 5% bondholders. Under it, the 5% bondholders do not receive in real value the just equivalent of what they now have and, as in the third

(9) *A. C. L.* v. *St. Joe Paper Co.* (CA-5), 179 Fed. (2) 538; *Benson* v. *Calloway* (CA-5), 165 Fed. (2) 877; *Insurance Group Committee* v. *Denver & R. G.*, 329 U. S. 607, 91 L. Ed. 547; *Comstock* v. *Institutional Investors* (CA-8), 163 Fed. (2) 350, affirmed 335 U. S. 211, 92 L. Ed. 1911; *Consolidated Rock Products* v. *DuBois*, 312 U. S. 510, 85 L. Ed. 982.

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plan, their rights are inequitably subordinated to the supposed public interest.

One of the outstanding infirmities of the fourth plan, as it was also of the third, is its adverse impact upon the rights of the minority 5% bondholders. As was pointed out by Judge Hutcheson in 179 Fed. (2), at page 543, with respect to the third plan, this is the result of the "tremendous over-emphasis on, and the preoccupation of the Commission with, the struggle on the one hand of St. Joe Paper Company (the duPont interests) and on the other the Coast Line, for control of the debtor, with its subordination of the primary question of the legal and equitable rights of the bondholders as such * * *." This is one of the principal reasons given by the Court of Appeals for rejecting the third plan. The same observation is equally true of the fourth plan, now before the Court.

From the Commission's fifth and sixth supplemental reports relating to the fourth plan, it convincingly appears that the Commission is still preoccupied with, and completely immersed in, this struggle for control between A. C. L. and the duPont interests, in which it has favored the Coast Line with adamant consistency since 1947, and to the distinct prejudice of the $20,000,000 of minority 5% bondholders, who, in order to effect a merger with the Coast Line, are required to relinquish what they now lawfully own and desire to keep, and to become involuntary security holders in Atlantic Coast Line, a wholly unrelated corporation. This result is unfair to all the 5% bondholders, but particularly to the minority groups, who are innocent bystanders caught between the upper and nether millstone, and who now, like ancient Odysseus, drift helplessly between Scylla and Charybdis, hoping to be rescued.

What is proposed by the Commission in the fourth plan, as in the third, is not really a "merger." It is in fact an enforced, non-competitive sale of F. E. C. to A. C. L., a wholly unrelated corporation, over the objections of 99% of the present bondholders whose property interests are

at stake, and who do not wish to sell, and over the active protest of the F. E. C. employees whose jobs and seniority rights are also at stake, and who do not wish to be forcibly transferred to Atlantic Coast Line. The plan virtually gives A. C. L. the power of eminent domain over F. E. C., with authority to pay, not in cash, but 90% in Coast Line securities of debatable value.

Technically, these 5% bondholders are not now the owners of the legal title to the property, but are creditors holding a lien. In equity and good conscience, however, this railroad belongs to the 5% bondholders, subject only to equipment obligations, and to the lien of the first mortgage, funds to pay off the latter being presently available. The 5% bondholders own the equity in the property, after satisfying these obligations. To deprive them of the equitable ownership of this property in which they have invested their money and which they desire to retain, and over their active objections to require them to accept in lieu thereof unwanted securities in an entirely different and unrelated railroad corporation, in the management of which they would have no voice, is intrinsically unfair and inequitable. This is so even though the new securities in the other railroad may have an ostensible value equal to that of the present securities of the debtor railroad. If persons are to be thus deprived, *in invitum,* of their lawfully held property and forced over their objection to accept in lieu thereof property of debatable value which they do not want, while the property they now lawfully own and wish to retain is awarded to a stranger who wishes to acquire it, the exercise of such a drastic and far-reaching power-approaching absolutism in Government even in the case of a public utility—should rest upon considerations more compelling then those offered by the Commission in support of its fourth plan.

Atlantic Coast Line had the same opportunity to buy up these 5% bonds as did the duPonts and others, and thus become the equitable owners of this property, but they

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did not do so. They stood by during the lean years when the road was struggling to get back on its feet after the nation-wide depression, until the road's cash position was greatly improved, with some $20,000,000 in cash and supplies on hand, until more than $27,000,000 has now been spent from earnings in improving and rehabilitating the road, until the intervening rights of the present 5% bondholders had arisen, until revenues are clearly on the increase and the road in a prosperous condition, and now, with the sanction of the Commission, propose to take over F. E. C. and add it to the Coast Line's already far-flung system. This the fourth plan permits them to do, on what appears to be a very low valuation, payable, not in cash, but 90% in Coast Line securities of fluctuating and debatable value. This Court is of the opinion that such a procedure is intrinsically unfair and inequitable.

Pretermitting, however, the considerations above discussed, and taking the fourth plan at its face value, it is inherently unfair and inequitable to the present security holders, for the following reasons, amongst others:

1. In valuing the property the Commission did not follow the mandate of Section 77(e) that it "give due consideration to the earning power of the property, past, present, and prospective, * * *."

The fourth plan values the property at $46,500,000 which was obviously reached by a capitalization at 5% of the sum of $2,300,000, found by the Commission to be the amount of adjusted net income reasonably available for Federal income tax and corporate fixed charges, in a future normal year. That this was the Commission's method of valuation is made crystal clear by the fact that 20 times $2,300,000 (a 5% capitalization) is $46,000,000, to which was admittedly added $500,000 representing a capitalization of one-half the anticipated annual savings to be effected by the proposed merger, which will be discussed later. This figure as to net earnings is therefore

the foundation of the Commission's plan of capitalization. If it is inaccurate, the whole structure topples.

The Commission finds that F. E. C. adjusted net income available for fixed charges and federal income taxes, that is, what might be called "net" income before federal taxes, has been:

1946	$3,315,197
1947	$2,063,897
1948	$2,492,191
1949	$2,020,970
1950	$2,711,185

Average for the five-year period, $2,520,688.

In arriving at these figures, the Commission deducted, each year, from annual gross income the sum of $518,-856[9½] for rail normalization, which is roughly the equivalent of rail depreciation, being the average annual cost of re-placing the rails as they wear out. This figure for rail normalization is obviously too high. The Commission itself says it "may be excessive." The Court readily agrees that it is. This figure is, to the dollar, the figure supplied by the A. C. L. witness, Ormond, arrived at by an exceedingly intricate and complicated computation based upon the experience of the A. C. L. in its own operations, which apparently left the Commission unconvinced of its applicability to Florida East Coast. Yet the Commission used that figure in the most vital calculation entering into its plan of capitalization, namely a determination of net available income, which it capitalized at 5% in order to determine the valuation of the property.

In the testimony before this Court, two credible witnesses fixed this amount at $221,638 per year. The latter sum $221,638, is arrived at by taking the figure of $6,649,-145.76, which was the *actual* sum expended by F. E. C. in

(9½) The figure used by the Commission for the year 1946 was actually $459,537.00.

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its rail rehabilitation program just completed, and dividing that sum by 30 years—the normal service life of the type of rail in question. This produces a quotient of $221,638 as the average cost per annum to be deducted from gross income. Nothing could be simpler nor fairer. Yet the Commission, employing a highly theoretical and technical formula used by another railroad, and apparently rejecting all the other credible evidence on the subject relating to the F. E. C. itself, has deducted from F. E. C. income $518,856—more than double the above figures based upon actual cost—not theory. This, of course, drastically reduced net available income, and that in turn reduces capitalization, because the Commission has capitalized net available income at 5% in order to determine the value of the property.

If F. E. C. income is reduced annually for rail normalization by $221,638, which is based upon actual experience, rather than $518,856, borrowed by the Commission from A. C. L., the net available income of F. E. C. would be:[10]

1946	$3,612,415
1947	$2,361,115
1948	$2,789,409
1949	$2,318,188
1950	$3,008,403

Average for the five-year period $2,817,906, instead of $2,520,688, as found by the Commission, and reduced by it to $2,300,000 for purposes of capitalization. If $2,817,906 is capitalized at 5%, it produces a capital value of $56,358,120, instead of $46,500,000 adopted by the Commission.

Over the last 10 years, which included some "war years," the debtor's average annual adjusted net earnings have been approximately $5,600,000; over the past 15 years, including both "war" and "lean" years, approximately $4,000,000. The figure of $2,300,000 finally adopted by the Commission as "normal" future annual earnings is

(10) Arrived at by taking the excess of the A. C. L. witness figure over the actual experience figure of F. E. C. ($297,218.00) and adding it to the Commission's income figures given in the last preceding tabulation.

less than half actual average earnings over the past 10 years, when properly adjusted, approximately three-fifths of the average earnings over the past 15 years, and about three-fourths the average for the past five years.

From the testimony before it, the Court finds that in fixing the net available income at $2,300,000 the Commission did not follow the evidence, did not give *due* consideration to the earning power of F. E. C., and therefore did not obey the statutory mandate. Its own doubts were candidly admitted by the finding that its deduction figure "may be excessive."

In view of the substantial and undisputed evidence of the continuous growth in population of the territory served by F. E. C., the new industries located on that line within the past few years, one of which alone will produce an annual revenue to F. E. C. of $700,000, the 50% Dieselization of service with resulting operating economy, and particularly in view of the fact that freight revenue has more than doubled during the past 10 years, and taking into account the road's *actual* net adjusted earnings in the past, averaging $2,817,906 during the 5 years 1946-50, instead of $2,300,000 theoretically adopted by the Commission the Court finds that a plan based upon a capitalization of $2,300,000 as normal available income is entirely inconsistent with the actual proven experience of the road, and unsupported by substantial evidence.

This figure of $2,300,000 for annual available net income does not, and could not, take into account the net increase in earnings for 1951 due to rate increases, aggregating about $400,000. If capitalized at 5%, this revenue would produce an additional value of $8,000,000. The Florida Public Service Commission has recently allowed an additional intra-state increase of 10%, which is expected to produce an additional $300,000 increase in net revenue, and an application is now pending for an additional increase of 9% in inter-state rates.

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Moreover, the Commission valued this property in 1941 at $37,000,000, since which time there has been added thereto improvements and betterments aggregating approximately $27,000,000, the depreciated value of which is approximately $16,000,000. Add the latter sum to the 1941 Commission valuation of $37,000,000 and the result is $53,000,000. By capitalizing at 5% an annual adjusted net income of $2,300,000, as above explained, the Commission comes out with a present value of $46,000,000 (exclusive of the $500,000 for anticipated savings from unification). This is a recognized and permissible method of determining value, indeed the "primary" method when an internal reorganization is under consideration. But somewhere in this process $7,000,000 of actual value has vanished, the consequences of which are visited upon the 5% bondholders by this plan. That is because the Commission's estimated annual earnings of $2,300,000 is too low.

Although capitalization of the earning power is the primary method of determining value, it is nevertheless significant that, according to the Commission's own findings, the actual cost value of this property (exclusive of land and rights) has increased from $72,231,357 in 1938 to $78,713,104 in 1948—an increase in value of $6,481,747.

2. Under the fourth plan, the Commission uses a capitalization formula less favorable to the 5% bondholders than under the rejected third plan, or under any prior plan. The formula consists of two factors, (a) an estimate of normal annual earnings, and (b) a multiplier to convert earnings into value.

In its first plan (1942) the Commission estimated that the debtor's normal earnings would be $1,268,000, and used a multiplier of 29 to produce a capitalization of $37,000,000 (actually $36,772,000), thus capitalizing earnings at the rate of 3½%.

In the second (1945) and third (1947) plans, the estimate of earnings was $1,500,000, to which the Commission

applied a multiplier of 27, to produce a capitalization of $40,500,000, thus capitalizing earnings at the rate of 3¾%.

In the fourth plan, the earnings are estimated at $2,300,000, but the multiplier used is 20, to produce a value of only $46,000,000 (exclusive of the $500,000 added for anticipated savings as already explained), thus capitalizing earnings at the rate of 5%. So, while the estimated earnings in the fourth plan are increased by $800,000 over the third, this increase is offset by reducing the multiplier from 27 to 20, thus depressing the resulting valuation.

Otherwise stated, when the first plan was formulated, the earning power of money was assumed by the Commission to be 3½%; under the second and third plans 3¾%, but under the fourth plan it has jumped to 5%. This is much less favorable to the bondholders because, as the rate of yield increases, the amount of capital necessary to produce a given sum diminishes. Since in this case "capital" is synonymous with "value," it becomes readily apparent that by using the 5% capitalization in the fourth plan, a lower valuation of the property is produced than if a lower rate of yield had been used, as in the third and prior plans. For example, capitalized at 3¾% as in the third plan, it requires a capital of $2,666.67 to produce $100.00 of income, whereas if a capitalization of 5% is used, as in the fourth plan, a capital of only $2,000 is required to produce $100.00. If the term "capital" is translated into "value", as it should be here, it is readily apparent that to raise the rate of yield from 3¾% to 5% has the concomitant effect of reducing the capitalized value. As capitalization of earnings is the basis of valuation under the fourth plan, it is readily apparent that the bondholders do not fare as well under the fourth plan with a 5% rate of capitalization, as under the third with a 3¾% rate. If the multiplier 27, used by the Commission in the second and third plans, were used in this one, the present value of the property would become

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$62,100,000, exclusive of capitalized savings. If the multiplier 29, used by the Commission in the first plan, were again used here, the resulting valuation would be $66,700,000, even on a basis of average annual earnings of $2,300,000, which is too low.[10½]

3. To notice next a relatively small item: the third plan required A. C. L. to pay the 5% bondholders $4,125,000 in new cash. The fourth plan requires only $4,000,000.

4. The $4,000,000 required by the fourth plan, when analyzed, is more illusive than real. The plan requires that out of cash presently on hand, arising from F. E. C. earnings, there be segregated and turned over to A. C. L. $3,000,000 for construction of new stations and $1,000,000 for working capital (Only $500,000 was required for working capital under the third plan). Thus, A. C. L. puts in $4,000,000 in cash, and simultaneously receives from the estate of the debtor $4,000,000 in cash. This is a mere exchange of dollars, which benefits the present 5% bondholders not at all. The two amounts simply cancel. In essence, therefore, A. C. L. is not really paying $4,000,000 in additional money. In determining what the bondholders are to receive, this $4,000,000 should be eliminated from consideration, which will of itself reduce the consideration to be awarded the 5% bondholders to $42,500,000. These stations when built will of course become the property of A. C. L. under the plan.

[10½] The above computations are based upon the assumption that the estimates of future earnings, in each of the four plans were made on the same basis, that is, before Federal income taxes. This undoubtedly was true with respect to the estimates of $1,268,000 in the first plan and of $2,300,000 in the fourth plan. In connection with the estimate of $1,500,000 in the second and third plans, the Commission did not state whether it was before or after income taxes. However, in a footnote to the fourth plan (see document 938 of the Reorganization Proceedings, page 153, also text, page 169) it stated that the estimate of $1,500,000 for those plans was *after* income taxes. Upon this basis the before-tax earnings of an estimate of $1,500,000 after taxes would be $1,833,000 and the multiplier would be 22¼ instead of 27 and the capitalization rate, 4½% instead of 3¾%.

5. There is another interesting aspect of this $4,000,000. On December 14, 1945, there was a substantial amount of surplus cash on hand, subject to the lien of 5% bondholders, which ordinarily would have been used to pay defaulted interest on these bonds. It was considered prudent by the parties, however, and by the Court, to use this surplus cash to buy up senior 4½% first mortgage bonds, and thus save as far as possible the interest requirements thereon, which aggregated $540,000 annually. Accordingly, the Court authorized the reorganization trustees to purchase first mortgage bonds "for the account of and in the interest of" the 5% bondholders and to "keep them alive under an express trust for the benefit of" the 5% bondholders, whose money was to be used to buy them. Under this order an aggregate of $3,811,000, par value, of first mortgage bonds have been purchased by the trustees and are now held for the purpose stated. The fourth plan requires that this $4,000,000 cash payment by the Coast Line be used as far as necessary to repay the 5% bondholders for funds so advanced, and that the first mortgage bonds be retired. Here again, to the extent of $3,811,000, the 5% bondholders would get no new benefit from this $4,000,000, as they would simply be receiving back that which is already theirs—namely, the money subject to their lien originally used to purchase the first mortgage bonds.

6. This leaves $189,000 out of the $4,000,000, which under the plan would take the following course. Up until April 8, 1947, an internal reorganization was in prospect. Prior to that date, when new equipment or improvements to the road became necessary or desirable, they were paid for from surplus cash on hand which would otherwise have been available to pay defaulted interest on the 5% bonds. This was satisfactory to the bondholders because under a plan of internal reorganization they would own and receive the benefit of the improvements and equipment so

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purchased. When, however, on April 8, 1947, the Commission approved the so-called third or Coast Line plan, under which a complete stranger was to take over the property, the whole picture changed. It would be manifestly unjust and inequitable thereafter to take monies to which the 5% bondholders were presently entitled and use it to pay for improvements and new equipment which would pass to the ownership of the newcomer who was to take over the road and from which the 5% bondholders would receive no benefit after the plan became effective.

To meet this situation, beginning on July 17, 1947, and thereafter until the present time, in authorizing the use of such funds for the purchase of equipment or the making of improvements from time to time, the Court has provided in its orders that such funds shall be deemed to have been advanced by the 5% bondholders, "who shall be reimbursed therefor and who shall have a lien upon the cash and property of the debtor to the extent of said advances, which lien shall be superior to any interest in the property acquired through reorganization."

Under such orders, funds aggregating $6,250,988 have been expended from earnings, the present depreciated value of which is $5,261,436, for which the 5% bondholders have a lien against all monies and property of the debtor. The improvements purchased with this money were desirable, but not sufficiently indispensable to rank the cost thereof above the bondholders' lien. It is only equitable that if the A.C.L., or any other outsider, is to now take over the property, the 5% bondholders should be reimbursed, not in securities of fluctuating and debatable value, but in cash or its unassailable equivalent, for their funds which were taken from them in cash, and this ahead of any interest acquired by an outsider through reorganization. It can not be questioned that an outsider taking over this property should reimburse these 5% bondholders, at the depreciated value of the property as of the time of taking. Such is the

equity of the situation, and such is the clear purport of the Court's orders.

The fourth plan provides that the above mentioned balance of $189,000 out of said $4,000,000 shall be applied in reduction of said liens, and that if, after such application of cash, any such liens shall not have been fully discharged —which it was perfectly obvious they would not be—the remaining amount of such liens "shall not be disturbed", and the amount of A. C. L. Divisional First Mortgage bonds awarded to the 5% bondholders shall be reduced by a corresponding amount, thus leaving the bondholders under the necessity of enforcing their liens against the property. How this is to be done does not appear by the plan, except that A. C. L. "may" sell bonds and pay the liens from the proceeds. Thus, in order to retain the liens that the Court has repeatedly held they are entitled to, the 5% bondholders must give up a corresponding amount of new securities which they would otherwise receive. If they keep the liens they lose the new securities. If they take the new securities they lose the liens. In effect, the Commission thus cancels the liens, to which these bondholders are clearly entitled as against an outsider taking over the property.

This does not meet the equities of the situation. What was taken from the 5% bondholders was cash. They are entitled to be reimbursed in cash, or its clear equivalent. It does not suffice to give them A. C. L. securities, nor a potential law suit to enforce their liens. The 5% bondholders are entitled to have back out of the property, in cash or its clear equivalent, the depreciated value of the sums so taken from them, before a stranger takes over the property. This Court has repeatedly so indicated to the parties in denying the Coast Line's several motions to delete the lien clause from the orders authorizing the expenditure of the funds. It is the Court's duty to see that these liens, which it has imposed and to which these bondholders are clearly entitled, are respected and enforced *now*, and that

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the bondholders be not relegated to a mere law suit in an effort to recover that to which they are presently entitled.

7. The Commission found that unification of F. E. C. with A. C. L. would result in annual operating savings of $925,000, to the benefit of one-half of which, or $462,500, the 5% bondholders would be entitled, and that this should be reflected in the price to be paid by the Coast Line for the property. These savings, the Commission held, should be capitalized at 6.3%. This would produce a capital value of $7,337,300. Instead of adding this to the capitalized value of the property, however, which would have raised that value to $53,337,300, the Commission added to capitalized value only $500,000, barely more than one-half of one year's savings, and awarded the 5% bondholders $7,340,000 in Coast Line securities,—two-thirds in the proposed A. C. L. divisional *income* (not fixed interest) bonds, and one-third in A. C. L. common stock. The Court finds that this is not an equitable recognition of the 5% bondholders' rights as to such savings. If, as the Commission found, the bondholders are entitled to the benefit of one-half of these savings capitalized at 6.3%, then they are entitled to them on that basis, not on some basis of substituted securities, dependent on earnings, which may or may not give them the same benefit. In its sixth supplemental report, the Commission undertakes to explain that this apparent discrepancy is remedied by an improvement in the "quality" of the securities to be awarded the 5% bondholders. But the explanation leaves the reader still in need of further light.

Moreover, if this sum of $7,340,000, fixed by the Commission itself to represent unification savings, be deducted from the total valuation ($46,500,000), it leaves a value for the remainder of the property of only $39,160,000. Yet, in the 1947 plan, *which included no capitalized value for savings,* the Commission valued the property at $40,500,000. Thus, it appears that the bondholders are receiving, for the prop-

erty itself, $1,340,000 less under the fourth plan than under the third. This is made more graphic by setting it up as a simple table, as follows:

Third Plan Valuation		Fourth Plan Valuation
$40,500,000		$46,500,000
	Less capitalization of savings for which nothing was included in the third plan	$ 7,340,000
	Net valuation of the property itself	$39,160,000

If from the above computed value of $39,160,000, there is also deducted the $4,000,000 of purported value which is cancelled by a like amount to be received in cash by A. C. L. from the debtor's estate for working capital and the erection of new stations, the remaining value of all the other property and assets would be reduced to $35,160,000. If from this is deducted the $3,811,000 which is specifically allocated by the fourth plan to repay the 5% bondholders for a corresponding sum of their own money used to purchase first mortgage bonds for their account and benefit, the present capital value of the property is reduced to $31,349,000. Some railroad statisticians will no doubt find much fault with this computation, but it serves in a general and homely way to illustrate the strikingly low valuation placed by the Commission on this property, which now includes approximately $20,000,000 in cash and supplies on hand, 366 miles of modern, rock ballasted, double-track railroad, besides a substantial mileage of single tracks and passing tracks, and all the modern rolling stock and equipment that goes with it. It represents a total cash investment of $94,546,701.36, exclusive of the cost of the now abandoned Key West extension. The depreciated book value of the property as of December 31, 1950, is $82,926,237.89, exclusive of cash on hand of about $17,500,000. All this the Commission now values at $46,500,000 for purposes of reorganization, and proposes to compel the present

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owners, over their objection, to sell it to A. C. L. at that price. Yet the value of this same property for rate making purposes, fixed by the Commission itself, is in excess of $78,000,000, and its junk value, for materials alone, excluding erection costs, is $48,000,000.

8. According to the Commission, the above mentioned unification savings are to be achieved largely by consolidation of accessory facilities and by the ultimate elimination of at least 319 over-lapping employees. No doubt most, if not all of these, will be F. E. C. employees. It is not likely that A. C. L. will displace its own employees in order to retain F. E. C. employees.

F. E. C. employees, represented by Railway Labor Executives' Association, and others, vigorously—and with reason—oppose the proposed merger. The employees are entitled to consideration in the plan of reorganization, because their jobs and seniority rights are at stake. In determining the public interest, the welfare and morale of the employees is an important consideration. If A. C. L. takes over F. E. C., the present principal overhaul shops and general offices of the latter now located at St. Augustine, where most of the employees live, and many own their homes, and to some extent the Bowden Yards south of Jacksonville, and the Divisional Shops at New Smyrna, would ultimately and to some extent be consolidated with A. C. L. shops and offices at Jacksonville, Waycross, Ga., and Wilmington, N. C., the latter being the headquarters of A. C. L., and thus adversely affect many employees in their living arrangements, as well as in their seniority rights as employees, even if they do not lose their jobs outright. The A. C. L. officials deny that this will occur, but the finding of the Commission of savings to be effected by reducing the employees by at least 319, is ominous.

9. It has already been shown that the annual normal net income of $2,300,000 fixed by the Commission is not sup-

ported by the evidence. Under the fourth plan, the benefit of any earnings, or of any additional savings, in excess of the Commission's estimate, goes irretrievably to A. C. L. for all time to come. There would be no opportunity for the present security holders to share in it, except in a diluted ratio as stockholders in A. C. L. Thus, the bondholders take all the chances of the accuracy of the Commission's predictions, as the prospect of the earnings falling below $2,300,000 is, under the evidence, too remote for serious consideration.

10. In 1950-51 when the present plan was being formulated, the Commission had before it a plan proposed by the duPont interests under which the duPonts agreed to accept all common stock in a reorganized company in lieu of their present $25,000,000 of 5% bonds, giving to all other bondholders new 4% fixed interest first mortgage bonds, which would be worth par, on a dollar for dollar of principal basis of exchange. Thus the minority 5% bondholders would receive more and better bonds than under the Coast Line plan, and would be assured of a good return on a sound investment, while the duPont interests would take all the chances as to earnings. The minority 5% bondholders enthusiastically favored and urged this plan. But the Commission rejected it in favor of the Coast Line plan, under which these bondholders would receive less, because the Commission found that the public interest required operation and control of F. E. C. by A. C. L. Thus the Commission distinctly subordinated the property rights of the 5% bondholders to the supposed public interest, which the opinion of Judge Hutcheson on the former appeal makes it crystal clear should not be done, but that a reorganization under Sec. 77 should respect the rights of creditors equally with the public interest.

11. The Coast Line, as an unsecured creditor, may not participate in the debtor's mortgaged assets which are less

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in value than the mortgage debt, unless the debt be paid in full, either in cash or in new securities of equal worth and having the same priority as the old securities to be displaced.[11] Yet the effect of the fourth plan is to divest the 5% bondholders of their present equitable ownership of the mortgaged property and vest it in the Coast Line free of the mortgage lien, for a consideration less than the mortgage debt.

12. The Commission's findings as to public interest are wholly unsupported by evidence.

In submitting the first and second plans of reorganization, the Commission held in effect that operation of Florida East Coast Railway by the duPont interests (St. Joe Paper Company) which would have been the majority stockholder under those plans, would be compatible with the public interest. In this respect, the factual situation is the same now as it was then (1945), except for the advent of the Atlantic Coast Line upon the scene.

In submitting the third and fourth plans, under which ownership and control are awarded to Atlantic Coast Line, the Commission finds that control of Florida East Coast by St. Joe Paper Company would be contrary to the public interest, a clear reversal of its former position. The reasons assigned for this holding are:

(a) That "there is an inherent weakness in independent stub-end railroads, such as the Florida East Coast."

(b) That the duPont interests, because of their ownership of a chain of Florida banks, would be enabled to influence shippers to route their shipments over some carrier which the duPonts might wish to favor, and that this widespread banking influence might have "grave consequences"

(11) *Northern Pac.* v. *Boyd*, 228 U. S. 482, 57 L. Ed. 931; *Kansas City Term* v. *Central Union*, 271 U. S. 445, 70 L. Ed. 1028; *Consolidated Rock Products* v. *DuBois*, 312 U. S. 510, 85 L. Ed. 982; *Case* v. *Los Angeles*, 308 U. S. 106, 84 L. Ed. 110; *R. F. C.* v. *D. & R. G. R. Co.*, 328 U. S. 495, 90 L. Ed. 1400.

against which it would be impossible to adequately protect shippers and the public.

(c) That the St. Joe Paper Company and the duPont interests are potentially large shippers over F. E. C., and that advantages might accrue to them as shippers if they controlled the road.

(d) That operating economies will be effected by integration with A. C. L.

As to reason (a): Florida East Coast is the only double track railway in Florida.[12] It owns and operates 366 miles of modern, rock ballasted double track, from Jacksonville on the north to Miami on the south. Jacksonville, the second largest city in Florida, is the industrial and financial center of the State. Miami, the State's largest city, is one of the nation's greatest resort and recreation areas. The most direct railroad connection between these two cities is Florida East Coast. In addition, F. E. C. owns and operates single track branch lines which increase its total operated track to 571 miles.

It traverses the most populous, richest, and fastest growing sections of Florida,—all the tourist resorts along the Florida East Coast and the East Coast citrus growing areas. Its branch lines extend to the fabulously fertile truck growing areas around Lake Okeechobee, where vegetables mature in from 45 to 75 days after planting, and four crops a year are not uncommon. New industries are constantly being located along its lines, one of which alone will produce an annual revenue to F. E. C. of $700,000.

The 1950 population of the Jacksonville metropolitan area is 304,029, increasing to that figure from 210,143 in 1940, a growth of approximately 33⅓%. The 1950 population of the Miami metropolitan area is 495,084, increasing to that figure from 267,739 in 1940, an increase of approxi-

(12) The A. C. L. is double-tracked from Jacksonville to Richmond, of which 36 miles are in the State of Florida, also from Dunnellon to Trilby, Florida,—47 miles.

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mately 85%. From Jacksonville south to West Palm Beach, a distance of 299 miles, F. E. C. has no rail competition whatever, being the only rail carrier operating directly between those cities along the east coast of Florida. Along its route it serves such populous centers as Hollywood, population 14,531; Fort Lauderdale, population 36,328; the Palm Beaches, population 47,048; Daytona Beach, population 30,187; St. Augustine, population 13,555, and many others, all of which are prosperous and growing communities. Its lines are fully protected by the most modern, electrically operated safety system. They have recently been re-railed with new 112 and 115 pound steel rail at a cost of approximately $9,000,000, all paid for out of earnings. Its rolling stock consist largely of Diesel locomotives, the latest and most modern streamlined passenger equipment and adequate modern freight equipment with which it provides fast freight and local service, and with its connecting carriers furnishes daily passenger service in high speed trains from New York, Chicago, and Detroit, via Jacksonville to Miami and intermediate points.

Though the 12 Florida counties served by F. E. C. constitute only approximately 21% of the area of the State, these counties contain approximately 50% of the State's population, produce in value more than 50% of the State's vegetable crop, and 26% of the State's manufactured goods. More than 50% of the State's retail sales are made in these counties, and they have approximately 50% of the income of the State. Retail sales in these counties have increased 320.7% in the past 10 years. In the United States generally, retail sales increased only 206.5%.

The freight tonnage handled by F. E. C. has more than doubled, and the number of passengers carried by it has increased by approximately 50% during the past 10 years. Its passenger revenues have almost doubled, and its freight revenues almost tripled during the same period. Its net operating income during the same period has likewise approximately doubled. Its percentage of increase in tonnage carried during this period exceeds all other Florida

lines, including A. C. L., and its gross railroad operating revenues during the past 10 years have increased from $10,748,838.01 to $26,890,357.52 in 1950.

Exhibit No. 191, filed by St. Joe Paper Company at the 1945 I. C. C. hearing, which is the latest information available to the Court on the subject in the record, shows that Florida East Coast Railway, operating 12.74% of the miles of road in the State, represents 28.95% of the rail investment, 19.36% of the assessed valuation, and produced 22% of the freight operating revenues, and 44.5% of the passenger operating revenues, of all the rail lines in the State of Florida.

Yet this is the railroad which the Commission finds to be a "stub-end" railroad, "akin in its economic characteristics to a secondary main line or a major branch line of a large system," which must be integrated with Atlantic Coast Line in order to enable it to survive. It is difficult to understand how, after rendering satisfactory transportation service to the public for more than 56 years, even during receivership, this road has suddenly become impotent as an independent carrier, and able to continue operation only as a caudal appendage of A. C. L., which now has no line along the east coast of Florida, but is anxious to acquire one. The Commission's conclusion that this a "stub-end" road with the weaknesses usually inherent in such roads, is simply not supported by the evidence. Every statistical method of appraisal rebuts that conclusion. Of course, the road is now overcapitalized, due to over-expansion during the Florida "boom" of the 1920's, an expansion which then seemed imperative, but which later proved disastrous. This can very readily be remedied by a reduction in the debtor's capital structure appropriate to its present income, with a ratable distribution of the new securities to the present owners.

As to reason (b): The record is devoid of any evidence of actual or potential influence upon shippers by the duPont interests. The Commission's conclusion that the duPonts might attempt to prejudicially influence shippers rests upon

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mere inference drawn by the Commission from the fact that during the hearings before its Examiner many shippers along the Florida East Coast appeared in support of a plan of internal reorganization, with duPont control, opposing the merger with the Coast Line. From this the Commission infers, without tangible evidence, that these shippers were influenced by the duPont banks to take the attitude just mentioned, and upon this the Commission bases the further inference that if the road passes to duPont control, the duPont banks will be able to exert prejudicial influence upon shippers. The latter is also a conclusion resting upon no tangible evidence.

As to reason (c): Nor does the evidence support the conclusion that St. Joe Paper Company and the duPont banks are potentially large shippers over Florida East Coast who might gain an advantage from control. The manufacturing plant of St. Joe Paper Company is located at Port St. Joe, Florida, 310 miles via railroad from the nearest point on F. E. C. Railway. The evidence shows that during the *five-year* period 1947-1951, freight charges paid for shipments to or from St. Joe Paper Company over the lines of F. E. C. Railway aggregated $3,302.74 for the five-year period. Of this, one shipment of "reinforcing bars" accounted for $2,958.93, leaving what might be termed "ordinary" shipments amounting to $243.81, as the reinforcing bar shipment is an extraordinary one which will probably never recur. During this period, the duPont banks throughout Florida shipped or received merchandise over F. E. C. for which the aggregate freight charges were $4,464.05. During the same five-year period the gross operating revenue of F. E. C. was approximately $137,000,000, of which the duPont interests, as shippers, contributed a total of $7,666.79, or $1,533.16 per year of an average gross revenue for the F. E. C. of $27,000,000. There is no evidence that this situation is likely to change in the future.

As to reason (d): The Commission finds that unification of F. E. C. with A. C. L. would result in annual operat-

ing savings of $925,000. It has already been shown that this will be effected largely through the discharge of 319 employees. These prospective savings do not of themselves justify the consequences of the merger upon the employees, nor upon the property interests of the 5% bondholders.

There are other interesting aspects of this proposed merger. Atlantic Coast Line now has no line along the east coast of Florida, but desires to acquire one to extend its system into that territory, and thus enable it to compete with S. A. L. along the lower east coast of Florida. Florida East Coast is the only line available for this purpose.

A. C. L., however, does operate 681 miles of double track road from Jacksonville north to Richmond, with direct, and partly owned, connections to Washington, New York, and the East; also 238 miles of track from Jacksonville to Tampa, with branches to St. Petersburg, Naples, and Everglades City on the lower west coast of Florida and around the south side of Lake Okeechobee in south Florida; also other lines which connect the above named places, and intervening points, with all the principal cities of the Southeast from Atlanta, Birmingham, Montgomery, and Winston-Salem on the west; to Norfolk, Wilmington, Charleston, Savannah, and Brunswick on the east; in all about 5453 miles of main line track.

Atlantic Coast Line also owns 35% of the capital stock of Louisville & Nashville Railroad, a carrier operating 4764 miles of main line track serving the central western portion of the country from Cincinnati to New Orleans, via Louisville, Nashville, Birmingham, and Montgomery; also from St. Louis to New Orleans via Evansville and Nashville; and from Cincinnati to Atlanta via Knoxville. Atlantic Coast Line also owns 50% of the capital stock of Peninsular & Occidental Steamship Company, which operates a steamship line between Miami and Cuba. The remaining 50% of said stock is now owned by Florida East Coast Railway, but would be acquired by A. C. L. if the proposed merger is consummated. Why Atlantic Coast

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Line desires to add the Florida East Coast Railway to the far-flung system above described, so as to constitute it a competing line from Jacksonville to Miami, with connections to Cuba, is perfectly obvious.

Seaboard Air Line Railway and Southern Railway are competing carriers with Atlantic Coast Line from Jacksonville to the north, east, and central west. These roads now compete with A. C. L. for the interchange business of Florida East Coast at Jacksonville, through the Jacksonville "open gateway" to and from the east coast of Florida. The public now enjoys the benefit of this competition. Seaboard parallels A. C. L. from many Florida points to Jacksonville, also from Jacksonville to Richmond, with the same connections to the north and east. Seaboard and Southern, one or both, serve substantially the same principal cities as A. C. L. to the north and west of Jacksonville. From the interchange traffic at Jacksonville, Southern Railway received in 1949 a total revenue of $5,900,000. The Seaboard received $3,300,000. These two lines aggregated $9,200,000, about 57% of the total interchange revenue, the Coast Line and its affiliates having received a total of approximately $7,450,000.

It is obvious that the addition of Florida East Coast to its system would give A. C. L. a tremendous advantage—to say the least of it—over its competitors, the Seaboard and Southern, as to passenger and freight traffic originating along, or destined to, the east coast of Florida and in Cuba. It would effectively close the "open gateway", which now exists at Jacksonville, and give A. C. L. a virtual monopoly over the interchange business at Jacksonville. Apparently the Commission saw no "grave consequences" for the public in this situation. But it finds that because the duPonts control extensive banking resources in Florida—an advantage, it would seem, in operating a railroad—their control over the operation of the F. E. C. would be incompatible with the public interest.

It may be that the coercive possibilities which would accompany absorption of F. E. C. into the Atlantic Coast

Line, along with sole ownership of P&O S/S Company, and the potential influence of that set-up upon passengers and shippers as to the carrier they would select to the north, east, or west of Jacksonville, served by A. C. L. and L. & N., would have consequences less "grave" on the public interest than to entrust continued independent control to the present equitable owners of Florida East Coast, whose only disqualification is that some of them own a chain of Florida banks, but such a conclusion is wholly unsupported by evidence in this record. It should here be mentioned again that there are $20,000,000 of minority 5% bondholders who do not own any Florida banks, but who will nevertheless be penalized by the Commission's apprehensions as to the public interest.

With some exceptions, a shipper has the theoretical privilege of routing his shipment as he wishes. As to broken lot shipments, this is a privilege rarely exercised. As to carload shipments, it will hardly be doubted that a shipper who endeavors to procure empty cars from one carrier to be loaded with shipments to be routed over the lines of a competing carrier will find his path beset with difficulties.

There are other reasons why the fourth plan is unfair and inequitable, but these are enough. The basic inequities for which the third plan was rejected, still persist in the fourth. In fact, the fourth plan is an obvious repetition of the third, with a purported improvement in valuation and securities which really afford the bondholders no genuine advantage over the third. Per contra, the creditors receive less in real worth under the fourth plan. There must be some type of reorganization which will conserve the public interest, and at the same time deal equitably and fairly with the bondholders, but this plan does not do so.

For the same cogent reasons given by Judge Sibley and by Chief Judge Hutcheson as to the third plan, namely, because the fourth plan, as did the third, unjustly and inequitably subordinates the rights of the 5% bondholders,

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particularly the $20,000,000 of minority bonds, to the accomplishment of a forced merger with Atlantic Coast Line, which merger seems to be the primary objective of the Commission, and because this Court also finds that in fixing its valuation under the fourth plan, the Commission clearly did not give due consideration to the earning power of the property as commanded by the statute, nor did it follow legal standards, but adopted an arbitrary sum without support in the evidence, the Court rejects the fourth plan (certified October 25, 1951) as unjust, inequitable, and lacking in due recognition of the rights of the 5% bondholders, particularly the $20,000,000 minority group, contrary to Section 77 of the Bankruptcy Act, 11 U. S. C. A. 205.

This property has been in *custodia legis* more than 20 years. In an effort to expedite the restoration of this property to private operation, this Court, during hearings held pursuant to its order of February 28, 1939, advised the parties that they must either proceed promptly with the foreclosure of the defaulted 5% mortgage, or commence a Section 77 reorganization in bankruptcy. The creditors on January 25, 1941, commenced this proceeding under Section 77, which now has been pursued to an apparent impasse. The matter is now exactly where it was on January 25, 1941, when the bankruptcy reorganization was commenced. The Court has heretofore disapproved two plans and twice before referred the matter back to the Commission in an unsuccessful effort to secure a plan of reorganization the Court could approve.[13] This is the third plan to be disapproved.

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[13] The reorganization problem was originally referred to the Commission on January 25, 1941. The first proposed plan was certified by the Commission to the Court August 10, 1942. This plan was rejected by the Court and the matter referred back to the Commission, October 19, 1943. The second plan was approved by the Commission, January 8, 1945, but on July 20, 1945, the Commission reopened the entire proceedings and held further extended hearings beginning November 6, 1945, which culminated in the third or A. C. L. plan, which was finally certified to the Court, March 25, 1948. The third plan was rejected by this Court, and the matter again referred to the Commission, January 22, 1949. The fourth amended plan, now before the Court, was approved by the Commission, July 12, 1951, and certified to the Court for consideration, October 25, 1951. Thus have 11 years been consumed.

Section 77(e) provides:

> "If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reason therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on the motion of any party in interest refer the proceedings back to the Commission for further action. * * *."

Section 77(g) provides:

> "If in the light of all the existing circumstances there is undue delay in a reasonably expeditious reorganization of the debtor, the judge, in his discretion, shall (not may) on motion of any party in interest *or on his own motion* (italics supplied) after hearing and after consideration of the recommendation of the Commission, dismiss the proceedings."

Thus the statute expressly contemplates that the Court may dismiss a Section 77 proceeding either if the Court disapproves the plan, or if the proceeding is productive of undue delay. Both these conditions exist here.

There are now before the Court motions to dismiss the Section 77 proceeding filed by 75.5% of the First and Refunding Bondholders who appear for that purpose in person or by attorney, also by an additional 23.5% represented by the trustee for those bonds, aggregating 99% of the 5% bondholders, all of whom oppose the Commission's fourth plan, but who apparently will be able to agree upon a plan of their own which will assure a prompt reorganization of the debtor in equity through a foreclosure and sale under the 5% mortgage.

The Court feels that 11 years is long enough, especially following nearly 10 years of equity receivership, to continue its attempt to accomplish a Section 77 reorganization,

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and that it should now restore this railroad to private operation by the most expeditious course consistent with both the public and private interests involved. Three years have now elapsed since the third plan was rejected.

In the circumstances, the Court feels that this result can be best achieved through a prompt foreclosure of the 5% mortgage, to which these creditors are both legally and equitably entitled, and which will enable the Atlantic Coast Line, the 5% bondholders, the employees, and any other interested persons, to bid for the property at a public, competitive sale.

To that end, it will be ordered that effective June 1, 1952, at 12:01 A. M., the petition in bankruptcy shall stand dismissed, and the reorganization trustees directed to restore all property and records of the debtor to Scott M. Loftin and John W. Martin, as receivers in the 5% mortgage foreclosure, as expressly authorized by Sec. 77 (i), which receivership, still in existence though for the time being suspended, will be re-activated in all respects as it was on January 25, 1941, when it was superseded by Section 77 reorganization proceedings. These equity receivers will be directed to take charge of and operate the property under and pursuant to all orders of the Court in effect on January 25, 1941, as to said equity receivership, and any pertinent orders made in the bankruptcy proceedings since that time.

The plaintiffs in the 5% mortgage foreclosure will be directed to amend their complaint as they may be advised on or before May 1, 1952, and the defendants therein will be directed to file their answers to said complaint on or before June 1, 1952, after which the Court intends to proceed, as expeditiously as is possible and just, to foreclose the 5% mortgage and sell the property, at public and competitive sale, to the highest and best bidder who can demonstrate its ability to continue to operate the road and to satisfactorily serve the public interest, subject to the approval of the Commission under Section 20a of the Interstate Commerce Act, as to the reasonableness and adequacy

of any new securities to be issued by the purchaser, and subject also to any other applicable provisions of said Act.

Judgment accordingly.

LOUIE W. STRUM,
United States Circuit Judge,
Sitting as District Judge,
Pro hac vice.

Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

JACKSONVILLE DIVISION.

In Bankruptcy.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J. Bankruptcy.

The Court having heard and considered the evidence and arguments of all parties in interest who desired to be heard upon the proposed plan of reorganization of the debtor, approved by the Interstate Commerce Commission July 12, 1951 and certified to this Court October 25, 1951, pursuant to Section 77(d) of the Bankruptcy Act, as amended, the Court finds upon consideration thereof that said plan is neither fair nor equitable, and that it does not afford due recognition to the rights of the 5% bondholders, particularly the minority groups, and that said plan is therefore contrary to Section 77 of the Bankruptcy Act. It is therefore

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ORDERED AND ADJUDGED:

1. Said plan is disapproved.

The Court having disapproved said plan, and eleven years having now been consumed in an unsuccessful effort to secure a plan of reorganization which the Court could approve as fair and equitable, the Court finds that there is "undue delay in a reasonably expeditious reorganization of the debtor." It is therefore, pursuant to the express provisions of Section 77, further

ORDERED AND ADJUDGED:

2. The motions filed by or on behalf of 99% in amount of the 5% bondholders to dismiss the petition for reorganization, are granted, and said petition dismissed, effective June 1, 1952, at 12:01 a. m.

3. The Court being further of the opinion that a prompt and expeditious reorganization of the debtor can best be accomplished through a foreclosure of the 5% mortgage, to which holders of bonds thereby secured are both legally and equitably entitled, appropriate orders will be entered in the equity receivership to effect such foreclosure followed by a public and competitive sale of the property to the highest and best bidder who can demonstrate his (or its) ability to satisfactorily operate the property in the public interest, subject to the approval of the Interstate Commerce Commission under Section 20a of the Interstate Commerce Act, as to the reasonableness and adequacy of any new securities to be issued by the purchaser, and subject also to any other applicable provisions of said Act.

4. Effective June 1, 1952, at 12:01 a. m., Scott M. Loftin and John W. Martin, as reorganization trustees, shall, for the purposes aforesaid, turn over to Scott M. Loftin and John W. Martin, as equity receivers in case No. 757-Eq.,

all property and records of the debtor then in their possession.

DONE AND ORDERED at Jacksonville, Florida, March 11, 1952.

LOUIE W. STRUM,
United States Circuit Judge,
Sitting as District Judge,
Pro hac vice.

Notice of Appeal.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

NOTICE IS HEREBY GIVEN that Atlantic Coast Line Railroad Company hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order herein dated and filed March 11, 1952, whereby this Court, among other things, disapproved the plan of reorganization of the Debtor which is referred to in said order as having been approved by the Interstate Commerce Commission July 12, 1951 and certified to this Court October 25, 1951, and this Court ordered that, effective June 1, 1952, this proceeding be dismissed and Scott M. Loftin and John W. Martin, as Reorganization Trustees, shall turn over to Scott M. Loftin and John W. Martin, as Equity Receivers in Case No. 757-Eq., all property and records of the Debtor then in

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their possession, and from each and every part of said order.

Dated: Jacksonville, Florida, April 4, 1952.

HOWELL AND HOWELL
Atlantic National Bank Building
Jacksonville, Florida

By (signed) CHARLES C. HOWELL, JR.,
A Partner

(signed) CHARLES COOK HOWELL
Atlantic Coast Line Railroad Company
Wilmington, North Carolina

ALEXANDER & GREEN
120 Broadway
New York, N. Y.

By (signed) EDWARD W. BOURNE,
A Partner
Attorneys for Atlantic Coast Line
Railroad Company

Filed: April 4, 1952.

STATE OF FLORIDA
COUNTY OF DUVAL } ss.:

On this day, before me, the undersigned authority, personally appeared C. C. HOWELL, Jr., to me well known; who, having been first duly sworn, deposes and says that on May 1st, 1952, he mailed a true and correct copy of Atlantic Coast Line Railroad Company's notice of appeal dated April 4, 1952 to each counsel of record herein.

/s/ C. C. HOWELL, JR.

Sworn to and subscribed before me
this 1st day of May, 1952.

/s/ ELEANOR J. STILCHEN
Notary Public, State of Florida at large
My commission expires Dec. 11, 1954.
Bonded by American Surety Co. of N. Y.

Order Extending Time for Filing Record.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

Atlantic Coast Line Railroad Company having appealed to the United States Court of Appeals for the Fifth Circuit by notices of appeal dated April 4, 1952, and April 24, 1952, from the order filed herein on March 11, 1952, disapproving the plan of reorganization of the Debtor and dismissing the proceedings, and counsel for Atlantic Coast Line Railroad Company having advised the Court that it is impracticable to file the record on said appeals and to docket said appeals within the time required without extension, it is, on motion of counsel for Atlantic Coast Line Railroad Company

ORDERED that the time for filing the record on said appeals and docketing said appeals is hereby extended to June 16, 1952.

/s/ LOUIE W. STRUM
United States Circuit Judge,
Sitting as District Judge
Pro hac vice.

At Jacksonville, Florida
April 28, 1952.

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad

IN THE MATTER
of
FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

No. 4827-J.

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

To the Clerk of the above-named Court:

You are hereby requested, pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, to include, in the record on the appeal of the above-named appellant to the United States Court of Appeals for the Fifth Circuit from the order dated and filed herein March 11, 1952, whereby the above-named Court, among other things, disapproved the plan of reorganization of the Debtor which is referred to in said order as having been approved by the Interstate Commerce Commission July 12, 1951 and certified to the Court October 25, 1951, and the Court ordered that, effective June 1, 1952, this proceeding be dismissed and Scott M. Loftin and John W. Martin, as Reorganization Trustees, shall turn over to Scott M. Loftin and John W. Martin, as Equity Receivers in Case No. 757-Eq., all property and records of the Debtor then in their possession the following portions of the record, proceedings and evidence herein:

Designation of Contents of Record on Appeal, etc.

1. The papers covered by certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Petition of Equitable Life Assurance Society of the United States, *et al.*, and order of the Commission entered March 1, 1941;

Petition of Jesse Ball Dupont, *et al.*, as Trustees, and order of the Commission entered March 8, 1941;

Petition of Bankers Trust Company, *et al.*, as Trustees, and order of the Commission entered March 5, 1941;

Petition of Guaranty Trust Company of New York, *et al.*, as Successor Trustees, filed March 17, 1941;

Petition of Fred G. Hamilton, filed March 17, 1941;

Petition of Independent Protective Committee of Florida East Coast Railway Company First Mortgage Bonds, filed March 17, 1941;

Petition of The New York Trust Company, as Successor Trustee, filed March 18, 1941;

Petition of S. A. Lynch, filed April 21, 1941;

Petition of Greater Miami Traffic Association, filed April 22, 1941;

Order of the Commission entered February 24, 1941, and accompanying notice;

Petition of Scott M. Loftin, filed March 10, 1941;

Petition of Edward W. Lane, filed March 10, 1941;

Statement supplementing petition of Edward W. Lane, filed March 17, 1941;

Objections of Fred G. Hamilton, filed March 17, 1941;

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Order of the Commission entered April 8, 1941;

Objections of Fred G. Hamilton, filed April 21, 1941;

Order of the Commission entered April 19, 1941, and accompanying report;

Appeal of Brotherhood of Locomotive Firemen and Enginemen from Ruling of Examiner Denying Leave to Intervene, filed April 30, 1941;

Reply of Trustees of The Estate of Alfred I. duPont, filed May 10, 1941;

Order of the Commission entered May 31, 1941;

Certificate of the Commission entered June 2, 1941;

Order of the Commission entered June 7, 1941;

Report proposed by Ralph H. Jewell, Examiner, filed August 4, 1941;

Exceptions of Greater Miami Traffic Association, filed September 17, 1941;

Exceptions of Guaranty Trust Company of New York, *et al.*, Successor Trustees, filed September 20, 1941;

Exceptions of Estate of Alfred I. duPont, filed September 20, 1941;

Exceptions of Independent Protective Committee, filed September 22, 1941;

Exceptions of Institutional Group of First Mortgage Bondholders, filed September 22, 1941;

Exceptions of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed September 22, 1941;

Exceptions of Fred G. Hamilton, filed September 22, 1941;

Exceptions of Greater Miami Traffic Association, filed September 22, 1941;

Exceptions of Bankers Trust Company, *et al.*, as Trustees, filed September 22, 1941;

Reply of Fred G. Hamilton, filed October 2, 1941;

Reply of Fred G. Hamilton, filed October 2, 1941;

Transcript of the Stenographer's notes of the oral argument heard October 24, 1941, at Washington, D. C.;

Report and order of the Commission, filed and entered April 6, 1942;

Petition of John W. Martin, filed April 20, 1942;

Order of the Commission entered May 6, 1942;

Order of the Commission entered May 28, 1942;

Petition of Guaranty Trust Company of New York, Successor Trustee, filed June 4, 1942;

Petition of Trustees of the Estate of Alfred I. duPont, filed June 5, 1942;

Petition of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed June 5, 1942;

Reply of Guaranty Trust Company of New York, Successor Trustee, filed June 15, 1942;

Reply of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed June 15, 1942;

Petition of Independent Protective Committee filed July 18, 1942;

Petition of Trustees of Estate of Alfred I. duPont, filed July 20, 1942;

Memorandum of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 30, 1942;

Order of the Commission entered August 10, 1942; and

Report and Order of the Commission, filed and entered August 10, 1942,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

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2. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

> "I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is true copy of transcript of the stenographer's notes of the hearing held March 17, 18, 19, 28 and 31, and April 21 and 22, 1941, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the original of which is now on file and of record in the office of said Commission."

3. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

> "I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of Exhibits No. 1 to 65, both inclusive, filed at the hearing held March 17, 18, 19, 28 and 31, and April 21 and 22, 1941, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

4. The papers covered by a certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

> "I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:
>
> Petition of Frank D. Newman for leave to intervene, and order of the Commission entered February 7, 1944;

Petition of United States Trust Company of New York for leave to intervene, and order of the Commission entered March 14, 1944;

Petition of St. Joe Paper Company for leave to intervene, and order of the Commission entered April 22, 1944;

Petitions of E. N. Claughton, Fred K. Conn and Associates, Edward Ball, Safe Deposit & Trust Co., Ogden T. Davis, Royal Palm Inv., Inc., and Bancroft T. Foley for leave to intervene, filed at the hearing held May 3, 1944;

Petition of Atlantic Coast Line Railroad Company for leave to intervene, and order of the Commission entered November 30, 1944;

Petition of Lorenzo C. Dilks for leave to intervene, and order of the Commission entered March 17, 1945;

Petition of Railway Labor Executives' Association for leave to intervene, and order of the Commission entered May 28, 1945;

Petition of Southern Railway Company, *et al.*, for leave to intervene, and order of the Commission, entered August 1, 1945;

Petition of St. Johns County, Florida, *et al.* for leave to intervene, and order of the Commission entered October 22, 1945;

Petition of St. Lucie County, Florida, *et al.* for leave to intervene, filed at hearing held November 13, 1945;

Petition of City of New Smyrna Beach, Florida, *et al.* for leave to intervene, filed at hearing beginning November 6, 1945;

Petition of Alleghany Corporation for leave to intervene, filed at hearing held November 6, 1945;

Petition of the City of Fort Pierce, *et al.*, for leave to intervene, filed at hearing held November 28, 1945;

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Petition of Miami Chamber of Commerce for leave to intervene, filed at hearing held November 28, 1945;

Petition of Brotherhood of Railroad Trainmen for leave to intervene, filed at hearing held November 23, 1945;

Petition of Jacksonville Chamber of Commerce, *et al.*, for leave to intervene, filed at hearing held November 13, 1945; and

Petition of Seaboard Air Line Railroad Company for leave to intervene, and order of the Commission entered September 23, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

5. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Plan of reorganization filed May 3, 1944;

Plan of reorganization filed November 6, 1945;

Order of the Commission entered November 6, 1943, and accompanying notice;

Proof of publication;

Order of the Commission entered November 29, 1943, and accompanying notice;

Order of the Commission entered December 31, 1943; and accompanying notice;

Order of the Commission entered February 16, 1944, and accompanying notice;

Petition of United States Trust Company of New York, as Trustee, filed March 15, 1944;

Petition of Frank D. Newman filed April 20, 1944;

Proposal of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed April 22, 1944;

Petition of St. Joe Paper Company, filed April 22, 1944;

Answer and Objections of Bankers Trust Company, *et al.*, filed April 27, 1944;

Suggestions of Fred G. Hamilton, *et al.*, filed May 3, 1944;

Brief of Independent Protective Committee of First Mortgage Bonds, filed July 7, 1944;

Brief of Institutional Group of First Mortgage Bondholders, filed July 12, 1944;

Brief and argument of Fred G. Hamilton, filed July 14, 1944;

Brief of St. Joe Paper Company, filed July 15, 1944;

Brief of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 15, 1944;

Joint Brief of Joseph van B. Wittman, *et al.*, filed July 15, 1944;

Brief of Guaranty Trust Company of New York, *et al.*, filed July 15, 1944;

Brief of United States Trust Company of New York, filed July 15, 1944;

Brief of Frank D. Newman, filed July 20, 1944;

Petition of S. A. Lynch, *et al.*, filed November 8, 1944;

Reply of St. Joe Paper Company to Petition of S. A. Lynch, *et al.*, filed November 17, 1944;

Notice of the Commission dated November 29, 1944;

Brief of Independent Protective Committee, filed December 6, 1944;

Brief of Fred G. Hamilton, filed December 7, 1944;

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Brief of St. Joe Paper Company, filed December 7, 1944;

Brief of S. A. Lynch, *et al.*, filed December 8, 1944;

Memorandum of Atlantic Coast Line Railroad Company, filed December 8, 1944;

Summary, report and order of the Commission, filed and entered January 8, 1945;

Petition of Lorenzo C. Dilks, filed March 5, 1945;

Petition of St. Joe Paper Company, filed March 8, 1945;

Petition of Frank B. Newman, filed March 8, 1945;

Petition of S. A. Lynch, *et al.*, filed March 9, 1945;

Petition of Deposit Committee for the First and Refunding Mortgage 5% Bonds, filed March 9, 1945;

Petition of Safe Deposit and Trust Company of Baltimore, filed March 9, 1945;

Reply of S. A. Lynch, *et al.*, filed March 19, 1945;

Reply of St. Joe Paper Company, filed March 19, 1945;

Notice of the Commission dated May 8, 1945;

Transcript of the stenographer's notes of the oral argument heard May 29, 1945, at Washington, D. C.;

Order of the Commission entered July 20, 1945, and accompanying notice;

Petition of Atlantic Coast Line Railroad Company, filed July 27, 1945;

Petition of Fred G. Hamilton, filed August 2, 1945;

Order of the Commission entered August 17, 1945, and accompanying notice;

Order of the Commission entered October 25, 1945;

Amendment to petition of Fred G. Hamilton, filed November 5, 1945; and

Proof of publication, filed November 6, 1945,

in Finance Docket No. 13170, Florida East Coast Railway Company reorganization, the originals of which are now on file and of record in the office of said Commission."

6. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held May 3, 1944, at Washington, D. C., and Exhibits No. 66 to 89, both inclusive, filed at said hearing in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

7. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A.D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held November 6, 7, 8 and 9, 1945, at Washington, D. C., and Exhibits No. 90 to 165, both inclusive, filed at said hearing, in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

8. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A.D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached

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are true copies of the transcript of the stenographer's notes of the hearing held November 13, 14, 15, 16, 19, 20 and 21, 1945, at West Palm Beach, Florida, and Exhibits No. 166 to 216, both inclusive, filed at said hearing in Finance Docket No. 13170, the originals of which are now on file and of record in the office of said Commission."

9. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A.D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of transcript of the stenographer's notes of the hearing held November 23, 26 and 27, 1945, at West Palm Beach, Florida, and Exhibits No. 217 to 242, both inclusive, filed at said hearing, in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

10. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A.D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Transcript of the stenographer's notes of the hearing held November 28, 29 and 30, 1945, at West Palm Beach, Florida, and Exhibits No. 243 to 266, both inclusive, and 268 to 297, both inclusive, filed at said hearing; and

Exhibits No. 298 to 303, both inclusive, received pursuant to order of the Commission entered June 27, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

11. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A.D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Memorandum of Guaranty Trust Company of New York, et al., filed January 22, 1946;

Memorandum of Claude Pepper, Senator, filed February 15, 1946;

Memorandum of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed February 15, 1946;

Brief of Board of County Commissioners of St. Johns County, Florida, filed February 13, 1946;

Brief of St. Joe Paper Company, filed February 14, 1946;

Brief of Greater Miami Chamber of Commerce, et al., filed February 14, 1946;

Brief of Southern Railway Company, et al., filed February 14, 1946;

Brief of Congressman J. Hardin Peterson, filed February 14, 1946;

Brief of The New York Trust Company, as trustee, filed February 15, 1946;

Brief of S. A. Lynch, *et al.*, filed February 15, 1946;

Brief of Atlantic Coast Line Railroad Company, filed February 15, 1946;

Brief of the City of New Smyrna Beach, Florida, filed February 15, 1946;

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Brief of City of Fort Pierce, Florida, *et al.*, filed February 15, 1946; and

Brief of Jacksonville Chamber of Commerce, *et al.*, filed February 18, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

12. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following;

Petition of Atlantic Coast Line Railroad Company, filed May 20, 1946;

Petition of St. Joe Paper Company, filed June 7, 1946;

Answer of Atlantic Coast Line Railroad Company, filed June 19, 1946;

Notice of the Commission dated June 21, 1946, and accompanying summary and third supplemental report proposed by Ralph H. Jewell, Examiner;

Order of the Commission entered June 27, 1946;

Exceptions of Lorenzo C. Dilks, filed August 5, 1946;

Exceptions of F. K. Conn, filed August 19, 1946;

Exceptions of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed August 19, 1946;

Statement of Congressman J. Hardin Peterson, filed August 19, 1946;

Brief of Claude Pepper, Senator, filed August 19, 1946.

Exceptions and brief of the New York Trust Company, as Trustee, filed August 20, 1946;

Exceptions of S. A. Lynch, *et al.*, filed August 20, 1946;

Exceptions of Atlantic Coast Line Railroad Company, filed August 20, 1946;

Reply of E. N. Claughton, filed September 9, 1946;

Reply of S. A. Lynch, *et al.*, filed September 9, 1946;

Reply of Southern Railway Company, *et al.*, to exceptions, filed September 9, 1946;

Reply of Southern Railway Company, *et al.*, to 'Brief of Claude Pepper, Senator from the State of Florida,' and to 'Statement of Congressman J. Hardin Peterson as to the Examiner's Proposed Report,' filed September 9, 1946;

Brief of Board of County Commissioners of St. Johns County, Florida, filed September 9, 1946;

Reply of The Miami Chamber of Commerce, filed September 9, 1946;

Reply of Jacksonville Chamber of Commerce, *et al.*, filed September 9, 1946;

Reply of St. Joe Paper Company filed September 9, 1946;

Statement of Joe Hendricks, Member of Congress, filed September 9, 1946;

Reply of The Greater Miami Traffic Association, filed September 9, 1946;

Reply of Atlantic Coast Line Railroad Company, filed September 9, 1946;

Reply of Fort Pierce, Florida, *et al.*, filed September 9, 1946;

Reply of the City of New Smyrna Beach, Florida, filed September 9, 1946;

Reply of Railway Labor Executives' Association, filed September 9, 1946;

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Petition of Seaboard Air Line Railroad Company, filed September 9, 1946;

Objection of Atlantic Coast Line Railroad Company, filed September 16, 1946;

Exceptions of Seaboard Air Line Railroad Company, filed October 9, 1946;

Transcript of the stenographer's notes of the oral argument heard October 9 and 10, 1946, at Washington, D. C.;

Letter dated New York, October 11, 1946, addressed to Interstate Commerce Commission, Washington 25, D. C., signed Francis T. P. Plimpton;

Letter dated New York, October 22, 1946, addressed to Interstate Commerce Commission, Washington 25, D. C., signed Jesse E. Waid; and

Supplemental order of the Commission entered November 12, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

13. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Notice of the Commission dated May 20, 1947, and summary and report and order of the Commission, filed and entered April 8, 1947;

Statement of Atlantic Coast Line Railroad Company, filed June 4, 1947;

Petition of St. Joe Paper Company, filed June 6, 1947;

Petition of the City of Fort Pierce, *et al.*, filed June 9, 1947;

Preliminary petition of E. N. Claughton, filed June 9, 1947;

Petition of F. K. Conn, *et al.*, filed June 9, 1947;

Petition of Miami Chamber of Commerce, *et al.*, filed June 9, 1947;

Preliminary petition of Board of County Commissioners of St. Johns County, Florida, filed June 9, 1947;

Petition of Jacksonville Chamber of Commerce, et al., filed June 9, 1947;

Petition of Seaboard Air Line Railroad Company, filed June 9, 1947;

Preliminary petition of City of New Smyrna Beach, Florida, filed June 9, 1947;

Petition of Brotherhood of Railroad Trainmen, filed June 9, 1947;

Petition of Railway Labor Executives' Association, filed June 9, 1947;

Petition of Southern Railway Company, *et al.*, filed June 9, 1947;

Petition of S. A. Lynch, *et al.*, filed June 9, 1947;

Preliminary petition of The New York Trust Company, as Trustee, filed June 10, 1947;

Argument in support of preliminary petition of City of New Smyrna Beach, filed July 17, 1947;

Supplemental petition of Southern Railway Company, *et al.*, filed July 17, 1947;

Supplement to petition of St. Joe Paper Company, filed July 18, 1947;

Supporting argument of the City of Fort Pierce, Florida, *et al.*, filed July 18, 1947;

Supplement to petition of S. A. Lynch, *et al.*, filed July 21, 1947;

Supplementary petition of The New York Trust Company, as Trustee, filed July 21, 1947;

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Supplemental petition of Miami Chamber of Commerce, *et al.*, filed July 21, 1947;

Petition of F. K. [illegible]onn, *et al.*, filed July 21, 1947;

Supplement to petition of Board of County Commissioners of St. Johns County, Florida, filed July 21, 1947;

Brief of E. N. Claughton, filed July 21, 1947;

Reply of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 28, 1947;

Reply of Claude Pepper, Senator, filed July 29, 1947;

Reply of Atlantic Coast Line Railroad Company, filed July 29, 1947;

Reply of S. A. Lynch, *et al.*, filed July 29, 1947;

Order of the Commission entered October 7, 1947;

Transcript of the stenographer's notes of the oral argument held January 6, 7 and 8, 1948, at Washington, D. C.; and

Report and order of the Commission, filed and entered March 25, 1948,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

14. Notice filed by Atlantic Coast Line Railroad Company, dated October 21, 1948, relating to the adoption by Atlantic Coast Line Railroad Company of the plan of reorganization which was approved by the Interstate Commerce Commission in its Fourth Supplemental Report and Order dated March 25, 1948 (hereinafter referred to as "the 1948 Plan"), with attachments lettered A to G, inclusive.

15. Order, dated and filed April 29, 1948, fixing the time within which objections to the 1948 plan and claims and fees incident to the reorganization may be filed.

16. Order, dated and filed October 11, 1948, fixing the date for the hearing on the 1948 Plan.

17. Report of the Trustees covering proof of the service of the Order of October 11, 1948 fixing the date for the hearing on the 1948 Plan, and publication thereof (three pages and verification only; attachments not to be included).

18. Order of the Honorable Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, dated November 17, 1948 and filed November 22, 1948, designating and appointing the Honorable Samuel H. Sibley, United States Circuit Judge for the Fifth Circuit, to hold the District Court of the United States for the Southern District of Florida, in place or in aid of the judges of said District.

19. Objections to the 1948 Plan, viz.:

Objections to the Reports and Orders of the Interstate Commerce Commission dated April 8, 1947, and March 25, 1948, filed by St. Joe Paper Company.

Objections of the Lynch Interests to the Modified Plan of Reorganization Embodied in the Third and Fourth Supplemental Reports of the Commission, and Claims for Equitable Treatment.

Objections of W. G. Welbon *et al.* to so-called Plan of Reorganization.

Motion to Refer Proceedings back to the Interstate Commerce Commission for Plan of Reorganization, and Objections to the Plan Submitted by the Interstate Commerce Commission, filed by F. K. Conn.

Objections of Chemical Bank & Trust Company and Howard B. Smith, as Successor Trustees under the First and Refunding Mortgage of the Debtor, dated September 1, 1924, to the Plan of Reorganization of the Debtor.

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Objections of The New York Trust Company, as Trustee of Florida East Coast Railway Equipment Trust Series D, to Plan of Reorganization of the Debtor certified by the Interstate Commerce Commission, and Claims of said Trustee for Equitable Treatment.

Objections of Seaboard Air Line Railroad Company to the Plan of Reorganization of the Debtor.

Objections by Interveners Southern Railway System Lines to Modified Plan of Reorganization of the Debtor, Approved by the Interstate Commerce Commission.

Protest of Railway Labor Executives' Association, Intervenor.

20. Petition for Intervention of F. K. Conn as Party to the Proceedings.

21. Petition to Set Aside and Annul Third Supplemental Order of the Interstate Commerce Commission Filed in this Cause, Filed by F. K. Conn.

22. Petition for Intervention of President and Directors of The Manhattan Company and J. Bryson Aird, as Successor Trustees under Florida East Coast Railway Company First and Refunding Mortgage dated September 1, 1924.

23. Transcript of the hearing on the objections to the 1948 Plan, pages 1 to 1049, except as follows:

(a) Omit pages 35-116 and insert the following:

(Here followed argument as to assets claimed to be free of the lien of the Mortgages.)

(b) Omit from page 647, line 15 to page 1035, line 6, and insert:

(Here followed argument on the objections to the Plan.)

(c) Omit page 1037, line 5 (starting with the words "Various briefs") to page 1048, line 11, and insert:

(Here followed further argument on the objections to the Plan.)

24. All exhibits introduced at the hearing on the objections to the 1948 Plan, viz.:

Exhibits Nos. 1-22, both inclusive, of Atlantic Coast Line Railroad Company.

Exhibits Nos. 1-6, both inclusive, of Arthur M. Anderson, Harry C. Hagerty, Henry S. Sturgis and D. C. Borden, a Deposit Committee for the First and Refunding 5% Bonds of the Florida East Coast Railway Company, due 1974.

Exhibits Nos. 1-7, both inclusive, of St. Joe Paper Company.

Exhibits Nos. 1-33, both inclusive, of the Lynch interests.

25. The following documents filed in these proceedings, the same being designated for convenience by their respective numbers in the printed Court record:

Number	Date of Filing	Description
1	January 25, 1941	Petition.
2	January 25, 1941	Answer of Debtor.
3	January 31, 1941	Order.
69	June 1, 1941	Order Fixing Time for Filing Claims and Classifying Creditors.
144	January 22, 1942	Report of Trustees as to Claims Filed.
336	October 19, 1943	Order and Opinion Sustaining Objections to Plan of Reorganization, and Referring Same Back to Interstate Commerce Commission.

BLEED THROUGH

Designation of Contents of Record on Appeal, etc.

Number	Date of Filing	Description
506	November 3, 1945	Application of Institutional Group Respecting Purchase by Trustees of First Mortgage Bonds.
507	December 14, 1945	Order Directing Trustees to Purchase First Mortgage Bonds of Debtor.
588	July 17, 1947	Order Respecting General Additions and Betterments for the year 1947.
595	July 25, 1947	Order Approving Financing of New Equipment and Conditional Sale Agreement.
619	January 6, 1948	Report of Trustees Respecting Proposed Construction of Okeelanta Branch.
633	July 29, 1947	Petition of Atlantic Coast Line Railroad Company for Leave to Intervene.
655	May 6, 1948	Objections of St. Joe Paper Company to Intervention of Atlantic Coast Line.
656	May 14, 1948	Amendment to Objections of St. Joe Paper Company.
662	May 18, 1948	Order Respecting Additions and Betterments for the Year 1948.
663	May 18, 1948	Order Granting Interventions, and Denying Petitions of First and Refunding Mortgage Trustees to Amend Previous Orders.
674	June 15, 1948	Petition of St. Joe Paper Company for Allowance for Counsel Fees.
693	August 26, 1948	Petition for Prepayment of First Mortgage Bonds.

Designation of Contents of Record on Appeal, etc.

Number	Date of Filing	Description
697	July 30, 1948	Petition of St. Joe Paper Company for Entry of Order Imposing Lien in favor of First and Refunding Mortgage Bondholders.
699	September 27, 1948	Answer of Atlantic Coast Line Railroad Company to Petition of St. Joe Paper Company.
700	September 28, 1948	Report of Trustees Giving Information Requested by St. Joe Paper Company.
701	September 23, 1948	Application of Trustees for Authority to Purchase 10 Diesel-electric locomotives.
702	September 27, 1948	Answer of Atlantic Coast Line Railroad Company to Application of Trustees to Purchase Diesel Locomotives.
703	October 6, 1948	Order Authorizing Trustees to Purchase 10 Diesel-electric Locomotives and Directing Method of Financing.
704	September 23, 1948	Application of Trustees for Authority to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.
705	October 6, 1948	Order Authorizing Trustees to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.
715	October 26, 1948	Report and Order of Interstate Commerce Commission fixing Maximum Allowances of Compensation and Expenses for Period February 15, 1945 Through May 15, 1948.

BLEED THROUGH

26. Transcript of hearing on October 1, 1948, which resulted in the orders of October 6, 1948 (Document No. 703 and Document No. 705) referred to in the preceding paragraph.

27. Opinion and order of the Honorable Samuel H. Sibley, United States Judge Designate, dated January 22, 1949 and filed January 24, 1949, disapproving the 1948 Plan and referring the proceedings back to the Interstate Commerce Commission for further action.

28. Notice of appeal of Atlantic Coast Line Railroad, filed February 21, 1949, from order filed January 24, 1949 disapproving the 1948 Plan and referring the proceedings back to the Interstate Commerce Commission for further action.

29. Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company, dated April 20, 1949.

30. Statement of Points of Atlantic Coast Line Railroad Company, dated April 20, 1949.

31. The following documents filed in these proceedings, being all the documents not otherwise designated herein which were designated by Appellees for inclusion in the record on the appeal to the United States Court of Appeals for the Fifth Circuit from the Order filed herein on January 24, 1949, disapproving the 1948 Plan and referring the proceedings back to the Interstate Commerce Commission for further action.

Petition of Atlantic Coast Line Railway Company for allowance of counsel fees and costs, Doc. 670 of the printed record of this reorganization proceeding.

Transcript of the hearing before Examiner Jewell of the Interstate Commerce Commission taken in New York City on the 20th day of July, 1948.

Order of the District Court of the United States authorizing the Trustees in Bankruptcy to enter into an agreement with the State Agricultural Marketing Board at Fort Pierce, Florida, dated October 6, 1948, being Doc. 707 of the printed transcript of the record in the above entitled reorganization proceeding.

Transcript of the hearing in the District Court of the United States in the above entitled cause on April 22nd, 1949, on petition of the Trustees in Bankruptcy and petitions of various bondholders and the Atlantic Coast Line Railroad Company, and the exhibit filed at said hearing.

Order of the District Court of the United States in the above entitled cause respecting additions and betterments for the year 1949, dated April 26, 1949.

Petition of W. G. Welbon, et al., for payment of interest coupons and distribution of bonds—filed June 26, 1947.

Petition of W. G. Welbon, et al., for payment of interest, filed April 7, 1948.

Motion to intervene filed by W. G. Welbon, et al., February 19, 1949.

Order of the Interstate Commerce Commission entered April 21, 1941 and accompanying report of the Bureau of Valuation, certified by the Secretary of the Interstate Commerce Commission under his Certificate dated August 22, 1942.

Transcript of hearing before the Court on July 14, 1947, which resulted in the order of July 17, 1947 (Doc. 588).

Transcript of hearing before the Court on July 25, 1947, which resulted in the order of July 25, 1947 (Doc. 595).

BLEED THROUGH

Transcript of hearing before the Court on May 17, 1947, which resulted in the order of May 18, 1947, respecting additions and betterments (Doc. 662).

Petitions of Seaboard Air Line Railroad Company for permission to intervene in this cause, dated May 7, 1948, filed May 10, 1948, being Document No. 657 in the printed Court record of this proceeding.

32. Mandate of the United States Court of Appeals, dated January 17, 1950, and April 12, 1950, and filed April 14, 1950.

33. The papers covered by a certificate of the Interstate Commerce Commission dated the 7th of November, 1951, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is true copy of the transcript of the stenographer's notes of the hearing held July 11, 12, 13 and 14, 1950, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the original of which is now on file and of record in the office of said Commission".

34. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is true copy of the transcript of the stenographer's notes of the hearing held August 8, 9, 10, 11, 12, 14, 15, 16 and 17, 1950, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the original of which is now on file and of record in the office of said Commission".

35. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

> "I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of Exhibits No. 304 to 342, both inclusive, filed at the hearings held July 11, 12, 13 and 14, and August 8, 9, 10, 11, 12, 14, 15, 16 and 17, 1950, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission".

36. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

> "I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of Exhibits No. 343 to 369, both inclusive, filed at the hearings held July 11, 12, 13 and 14, and August 8, 9, 10, 11, 12, 14, 15, 16 and 17, 1950, at Washington, D. C. in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

37. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

> "I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of Exhibits No. 370 to 461, both inclusive, filed at the hearings held July 11, 12, 13 and 14, and August 8, 9, 10, 11, 12, 14, 15, 16 and 17, 1950, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorgan-

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ization, the originals of which are now on file and of record in the office of said Commission."

38. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of Exhibits No. 462 to 489, both inclusive, filed at the hearings held July 11, 12, 13 and 14, and August 8, 9, 10, 11, 12, 14, 15, 16 and 17, 1950, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

39. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of annual, quarterly and monthly reports, filed pursuant to stipulation entered into at the hearing held July 12, 1950, at Washington, D. C., (transcript pages 5417 to 5421, both inclusive), in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

40. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

ED COPY

Petition of President and Directors of The Manhattan Company and J. Bryson Aird; as Successor Trustees, and order of the Commission February 28, 1949;

Order of the Commission entered May 18, 1950;

Order of the Commission entered May 29, 1950, and attached notice;

Order of the Commission entered June 1, 1950;

Proof of the publication of notice, filed in accordance with order of May 29, 1950;

Order of the Commission entered July 10, 1950, and attached report;

Petition of W. G. Welbon, et al., for leave to intervene, filed at hearing held July 11, 1950;

Petition of individual employees for leave to intervene, filed at hearing held July 11, 1950;

Petition of Herman Hamel for leave to intervene, filed at hearing held July 11, 1950;

Petition of Herman Hamel for leave to file a plan of reorganization, filed at hearing held July 11, 1950;

Motion for continuance on behalf of W. R. Huggins, et al., filed at hearing held July 14, 1950;

Petition of Florida Railroad and Public Utilities Commission for leave to intervene, and order of the Commission entered November 13, 1950;

Transcript of the stenographer's notes of the oral argument held December 14, and 15, 1950, at Washington, D. C.;

Summary of Fifth Supplemental Report of the Commission, and Fifth Supplemental report and order of the Commission, filed and entered July 12, 1951;

Petition of St. Joe Paper Company filed September 7, 1951;

Petition of The Railway Labor Executive's Association, et al., filed September 7, 1951;

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Petition of Atlantic Coast Line Railroad Company filed September 7, 1951;

Petition of Seaboard Air Line Railroad Company filed September 10, 1951;

Petition of President and Directors of The Manhattan Company and J. Bryson Aird as Successor Trustee, filed September 10, 1951;

Petition of Southern Railway System and Affiliated lines filed September 10, 1951;

Petition of Lynch interests filed September 10, 1951;

Petition of W. G. Welbon, et al., filed September 10, 1951;

Petition of F. K. Conn, et al., for reconsideration and modification, filed September 10, 1951;

Petition of Florida Railroad and Public Utilities Commission filed September 10, 1951;

Reply of Atlantic Coast Line Railroad Company filed September 21, 1951;

Reply to petition of Atlantic Coast Line Railroad Company filed September 26, 1951;

Reply of Deposit Committee for First and Refunding Mortgage 5% Bonds of Florida East Coast Railway Company, filed September 27, 1951;

Reply of President and Directors of The Manhattan Company and J. Bryson Aird as Successor Trustee, filed September 27, 1951;

Reply of Lynch interests filed September 27, 1951;

Reply of Greater Miami Traffic Association, et al., filed September 27, 1951; and

Sixth Supplemental Report and Order of the Commission, filed and entered October 25, 1951.

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

41. The papers covered by a further certificate of the Interstate Commerce Commission dated the 7th day of November, 1951, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Briefs of Southern Railway System and Affiliated Lines, filed October 6, 1950;

Brief of Greater Miami Traffic Association, et al., filed October 6, 1950;

Brief of W. R. Huggins, et al., filed October 6, 1950;

Brief of Lynch interests, filed October 9, 1950;

Brief of President and Directors of The Manhattan Company and J. Bryson Aird, Successor Trustee of the First and Refunding Mortgage, filed October 9, 1950.

Brief of W. G. Welbon, et al., filed October 9, 1950;

Brief of Atlantic Coast Line Railroad Company, filed October 9, 1950;

Brief of the Florida Railroad and Public Utilities Commission, filed October 9, 1950;

Brief of F. K. Conn, et al., filed October 9, 1950;

Brief of St. Joe Paper Company (Volumes III and IV), filed October 9, 1950;

Brief of Railway Labor Executives Association, et al., filed October 9, 1950;

Brief and requested findings of Seaboard Air Line Railroad Company, filed October 10, 1950;

Brief of Guaranty Trust Company of New York, et al., filed October 10, 1950;

Reply brief of The Lynch Interests, filed November 13, 1950;

Reply brief of Southern Railway System, et al., filed November 13, 1950;

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Reply brief of President and Directors of The Manhattan Company and J. Bryson Aird, Successor Trustee of the First and Refunding Mortgage, filed November 13, 1950;

Reply brief of F. K. Conn, et al., filed November 13, 1950;

Reply brief of St. Joe Paper Company, filed November 13, 1950;

Reply of Trustee of First and Refunding Mortgage and the Lynch Interests, filed November 13, 1950; and

Reply brief of W. G. Welbon, et al., filed November 16, 1950,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

42. Notice filed by Atlantic Coast Line Railroad Company, dated January 28, 1952, relating to the adoption by Atlantic Coast Line Railroad Company of the plan of reorganization approved by the Interstate Commerce Commission in its Fifth Supplemental Report and Order of July 12, 1951, as modified by its Sixth Supplemental Report and Order of October 25, 1951, and certified by the Commission to the Court on November 19, 1951 (hereinafter referred to as the "1951 Plan"), with attachments lettered A to E, inclusive.

43. Order of the Honorable Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, dated October 5, 1950, and filed October 5, 1950, designating and appointing the Honorable Louie W. Strum, United States Circuit Judge for the Fifth Circuit, to hold the District Court of the United States for the Southern District of Florida in place or in aid of the judges of said District.

Designation of Contents of Record on Appeal, etc.

44. Order of the Honorable Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, dated March 12, 1951, and filed March 15, 1951, designating and appointing the Honorable Louie W. Strum, United States Circuit Judge for the Fifth Circuit, to hold the District Court of the United States for the Southern District of Florida in place of or in aid of the judges of said District.

45. Order of the Honorable Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, dated December 31, 1951 and filed January 4, 1952, designating and appointing the Honorable Louie W. Strum, United States Circuit Judge for the Fifth Circuit, to hold the District Court of the United States for the Southern District of Florida in place or in aid of the judges of said District.

46. Order dated and filed November 19, 1951, fixing the time within which objections to the 1951 Plan might be filed and fixing the date for the hearing on said Plan.

47. Report of the Trustees filed December 19, 1951, covering proof of the service of the order of November 19, 1951 fixing the date of the hearing on the 1951 Plan, and publication thereof (three pages and verification only; attachments not to be included).

48. Objections to the 1951 Plan, viz.:

Objections to the modified plan of reorganization certified by the Interstate Commerce Commission and motion to dismiss proceeding, dated December 28, 1951, and filed by President and Directors of The Manhattan Company and J. Bryson Aird, as successor Trustees; by F. K. Conn, et al.; by W. G. Welbon, et al.; and by St. Joe Paper Company.

Additional Objections of F. K. Conn, et al., Intervenors, to 1951 Plan approved by the Interstate Commerce Commission.

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Additional Objections of St. Joe Paper Company, holder of First and Refunding Mortgage Bonds to modified plan of reorganization certified by the Interstate Commerce Commission, and Motion of St. Joe Paper Company to vacate Order of May 18, 1948.

Objections of Testamentary Trustees of the trust created by the Last Will and Testament and Codicils of Alfred I. duPont to the modified plan of reorganization certified by the Interstate Commerce Commission in its Fifth and Sixth Supplemental Reports.

Objections of the Lynch Interests to the plan of reorganization embodied in the Fifth and Sixth Supplemental Reports of the Commission, and claims for equitable treatment.

Objections of Intervenors Southern Railway System Lines to the modified plan of reorganization of the Debtor, approved by the Interstate Commerce Commission.

Objections of Seaboard Airline Railroad Company to the plan of reorganization of the Debtor.

Objections of Railway Labor Executives' Association, Intervenor, to modify plan of reorganization certified by the Interstate Commerce Commission in its Fifth and Sixth Supplemental Reports.

Objections by Intervenors Greater Miami Traffic Association and Miami Chamber of Commerce.

Objections of W. R. Huggins, et al. (employees of Florida East Coast Railway Company) to the modified plan of reorganization of the Debtor, approved and certified by the Interstate Commerce Commission.

Objections of Florida Railroad and Public Utilities Commission to plan of reorganization.

49. Transcript of the hearing on the objections to the 1951 Plan, pages 1-1170.

50. All exhibits introduced at the hearing upon the objections to the 1951 Plan, viz.:

Exhibits Nos. 1-A to 28, both inclusive, of the Lynch interests.

Exhibits Nos. A to DD, both inclusive, of St. Joe Paper Company.

Exhibits Nos. 1 to 10, both inclusive, of Atlantic Coast Line Railroad Company.

Exhibits Nos. 1 to 8, both inclusive, of Arthur M. Anderson, Harry C. Hagerty, Henry S. Sturgis, and D. C. Borden, a Deposit Committee for the First and Refunding 5% Bonds of the Florida East Coast Railway Company, due 1974.

51. The following documents filed in these proceedings, the same being designated for convenience by their respective numbers in the printed Court record:

Number	Date of Filing (as indicated in printed Court record)	Description
722	January 3, 1949	Application of Trustees to Purchase Rail for 1949 Delivery.
723	January 11, 1949	Order Authorizing Trustees to Purchase Rail for 1949 Delivery.
724	June 30, 1948	Petition of F. K. Conn for Leave to Intervene.
725	January 14, 1949	Order Granting Intervention of F. K. Conn.
726	June 22, 1948	Petition of Railway Labor Executives' Association for Leave to Intervene.
727	February 4, 1949	Order Granting Intervention of Railway Labor Executives' Association.

BLEED THROUGH

Number	Date of Filing (as indicated in printed Court record)	Description
728	December 18, 1948	Petition of President and Directors of the Manhattan Company and J. Bryson Aird, as Successor First and Refunding Mortgage Trustees, for Leave to Intervene.
729	January 10, 1949	Order Granting Intervention of President and Directors of the Bank of Manhattan and J. Bryson Aird as Successor First and Refunding Mortgage Trustees.
730	January 15, 1949	Supplemental Petition of New Yord Trust Company as Trustee, for Adjudication of Status of Certain Assets.
731	January 19, 1949	Order upon Supplemental Petition of New York Trust Company as Trustee.
733	January 24, 1949	Order Denying Petition for Prepayment of First Mortgage Bonds.
735	February 4, 1949	Application of Trustees Respecting Florida East Coast Railway Equipment Trust, Series K.
736	February 8, 1949	Order Approving and Authorizing Execution by Trustees of Florida East Coast Railway Equipment Trust, Series K.
737	February 5, 1949	Answer of First Mortgage Trustees to Supplemental Petition of New York Trust Company, as Trustee.
738	February 7, 1949	Answer of First and Refunding Mortgage Trustees to Supplemental Petition of New York Trust Company, as Trustee.

Number	Date of Filing (as indicated in printed Court record)	Description
743	February 14, 1949	Order Authorizing Abandonment of Palatka Branch.
747	February 23, 1949	Order Approving Settlement of Federal Taxes and Directing Payment.
758	March 23, 1949	Order Declaring Certain Assets Free of Liens.
760	April 26, 1949	Report of Trustees Respecting Changes in Corporate and Individual Trustees under First and Refunding Mortgage.
761	April 20, 1949	Application of Trustees to Purchase Additional Rail for 1949 Delivery.
762	April 20, 1949	Application for Authority to Increase Amount to be Expended for General Additions and Betterments for year 1949.
764	April 26, 1949	Order Authorizing Trustees to Purchase Additional Rail for 1949 Delivery.
765	April 26, 1949	Order Respecting Additions and Betterments for the Year 1949.
768	April 26, 1949	Order Authorizing Payment of September 1, 1933 and March 1 and September 1, 1934 Interest on First and Refunding Mortgage Bonds.
769	April 4, 1949	Motion of New York Trust Company, as Trustee, to Alter Order of March 23, 1949.
770	April 27, 1949	Order Denying Motion to Alter Order of March 23, 1949.

BLEED THROUGH

Designation of Contents of Record on Appeal, etc.

Number	Date of Filing (as indicated in printed Court record)	Description
784	June 27, 1949	Application of Trustees for Authority to Enter Into Uniform Service Contract and Car Lease with The Pullman Company.
785	July 11, 1949	Order Authorizing Trustees to Enter Into Uniform Service Contract and Car Lease with The Pullman Company.
790	September 20, 1949	Application of Trustees for Authority to Advance Funds to Jacksonville Terminal Company.
791	September 20, 1949	Order Authorizing Trustees to Advance Funds to Jacksonville Terminal Company.
793	October 17, 1949	Application of Trustees for Authority to Execute Second Supplemental Agreement with Chemical Bank & Trust Company, Respecting Delayed Delivery of Passenger Train Cars.
794	October 17, 1949	Order Authorizing Trustees to Execute Second Supplemental Agreement with Chemical Bank & Trust Company Respecting Delayed Delivery of Passenger Train Cars.
799	November 16, 1949	Report of Additions and Betterments During Last Six Months of 1946.
801	November 8, 1949	Petition of First and Refunding Mortgage Trustees for Purchase of Series D Equipment Trust Unsecured Claim.

Number	Date of Filing (as indicated in printed Court record)	Description
802	November 18, 1949	Petition of New York Trust Company as Trustee, Respecting Series D Equipment Trust Unsecured Claim.
803	December 9, 1949	Answer of First Mortgage Trustees Respecting Purchase of Series D Equipment Trust Unsecured Claim.
804	December 13, 1949	Stipulation Respecting Purchase of Series D Equipment Trust Unsecured Claim.
805	December 13, 1949	Order Directing Trustees to Purchase Series D Equipment Trust Unsecured Claim, and Dismissing Appeals from Order of March 23, 1949.
806	November 29, 1949	Report of Trustees Showing Election to Disaffirm and Reject Agreement with Atlantic Coast Line Railroad Company Covering Use of Palatka Terminals.
808	December 13, 1949	Order Approving Trustees' Election to Disaffirm and Reject Agreement with Atlantic Coast Line Railroad Company Covering Use of Palatka Terminals.
809	December 15, 1949	Election of Trustees to Disaffirm and Reject Agreement with Atlantic Coast Line Railroad Company Covering Use of Palatka Terminals.
810	December 8, 1949	Application of Trustees to Purchase Rail for 1950 Delivery.

BLEED THROUGH

Number	Date of Filing (as indicated in printed Court record)	Description
811	December 13, 1949	Order Authorizing Trustees to Purchase Rail for 1950 Delivery.
814	December 6, 1949	Petition of Trustees for Instructions Concerning Miami Passenger Station Facilities.
816	January 12, 1950	Report of Trustees Showing Purchase of Series D Equipment Trust Deficiency Decree, and Assignment Thereof.
822	December 21, 1949	Petition of Greater Miami Traffic Association, for Leave to Intervene.
823	January 30, 1950	Petition of Florida Railroad and Public Utilities Commission, for Leave to Intervene.
824	March 2, 1950	Order Granting Intervention of Greater Miami Traffic Association and Florida Railroad and Public Utilities Commission.
825	March 2, 1950	Petition of Florida Railroad and Public Utilities Commission Relating to Miami Passenger Station Facilities.
827	March 6, 1950	Answer of S. A. Lynch, et al., to Petition of Florida Railroad and Public Utilities Commission.
836	April 19, 1950	Answer of F. K. Conn to Petition of Florida Railroad and Public Utilities Commission.
837	April 21, 1950	Answer of St. Joe Paper Company to Petition of Florida Railroad and Public Utilities Commission.

Number	Date of Filing (as indicated in printed Court record)	Description
838	May 2, 1950	Answer of First Mortgage Trustees to Petition of Florida Railroad and Public Utilities Commission.
839	April 27, 1950	Answer of First and Refunding Mortgage Trustees to Petition of Florida Railroad and Public Utilities Commission.
840	April 28, 1950	Answer of Deposit Committee to Petition of Florida Railroad and Public Utilities Commission.
847	May 2, 1950	Petition of Atlantic Coast Line Railroad Company for Modification of Previous Orders.
852	May 23, 1950	Answer of S. A. Lynch, et al., to Petition of Atlantic Coast Line Railroad Company.
853	May 26, 1950	Answer of Deposit Committee to Petition of Atlantic Coast Line Railroad Company.
854	May 29, 1950	Answer of First and Refunding Mortgage Trustees to Petition of Atlantic Coast Line Railroad Company.
855	May 29, 1950	Answer of First Mortgage Trustees to Petition of Atlantic Coast Line Railroad Company.
856	May 31, 1950	Answer of F. K. Conn, et al., to Petition of Atlantic Coast Line Railroad Company.
857	May 31, 1950	Report of Additions and Betterments during the year 1947.

BLEED THROUGH

Number	Date of Filing (as indicated in printed Court record)	Description
858	May 31, 1950	Answer of St. Joe Paper Company to Petition of Atlantic Coast Line Railroad Company.
859	May 31, 1950	Motion of St. Joe Paper Company for Dismissal of Atlantic Coast Line Railroad Company, as party to cause.
863	June 15, 1950	Application of Trustees for Authority to Increase Amount to be Expended for General Additions and Betterments for the year 1950.
864	June 21, 1950	Answer of Atlantic Coast Line Railroad Company to Trustees' Application Respecting General Additions and Betterments.
865	June 21, 1950	Answer of Atlantic Coast Line Railroad Company to Motion of St. Joe Paper Company.
866	June 29, 1950	Order Denying Motion of St. Joe Paper Company to Dismiss Atlantic Coast Line Railroad Company from Proceedings.
867	June 29, 1950	Order Denying Petition of Atlantic Coast Line for Modification of Previous Orders.
868	June 29, 1950	Order Respecting General Additions and Betterments for the Year 1950.
870	July 17, 1950	Supplemental Report and Order of Interstate Commerce Commission Reaffirming Order of October 20, 1948 Fixing Maximum Allowances.

Number	Date of Filing (as indicated in printed Court record)	Description
871	August 1, 1950	Order Fixing Allowances for Reorganization Fees and Expenses from February 15, 1945, Through May 15, 1948, and Directing Payment.
874	September 11, 1950	Application of Trustees for Authority to Advance Funds to Jacksonville Terminal Company.
875	September 11, 1950	Answer of Atlantic Coast Line Railroad Company to Petition of Trustees Respecting Advances to Jacksonville Terminal Company.
876	September 11, 1950	Order Authorizing Trustees to Advance Funds to Jacksonville Terminal Company.
880	July 13, 1950	Report of Bureau of Valuation of Interstate Commerce Commission, Stating Value of Property of Debtor as of December 31, 1948.
881	October 13, 1950	Motion of Florida Railroad and Public Utilities Commission for Leave to File Motions to Strike.
882	October 20, 1950	Order Granting Florida Railroad and Public Utilities Commission Leave to File Motions to Strike Portions of Answer of F. K. Conn and Others.
883	October 24, 1950	Order Granting Florida Railroad and Public Utilities Commission Leave to File Motions to Strike Portions of Answer of Deposit Committee and Lynch Interests.

BLEED THROUGH

Number	Date of Filing (as indicated in printed Court record)	Description
884	October 24, 1950	Motion of Florida Railroad and Public Utilities Commission to Strike Portion of Answer of F. K. Conn.
885	October 24, 1950	Motion of Florida Railroad and Public Utilities Commission to Strike Portion of Answer of First Mortgage Trustees.
886	October 24, 1950	Motion of Florida Railroad and Public Utilities Commission to Strike Portion of Answer of First and Refunding Mortgage Trustees.
887	October 13, 1950	Motion of Florida Railroad and Public Utilities Commission to Strike Portion of Answer of Deposit Committee.
888	October 13, 1950	Motion of Florida Railroad and Public Utilities Commission to Strike Portion of Answer of Lynch Interests.
889	October 25, 1950	Application of Trustees for Authority to Purchase Lands for Industrial Sites at Miami.
890	October 24, 1950	Answer of Atlantic Coast Line Railroad Company to Application of Trustees for Authority to Purchase Lands for Industrial Sites at Miami.
891	October 30, 1950	Order Authorizing Trustees to Purchase Lands for Industrial Sites at Miami.

Number	Date of Filing (as indicated in printed Court record)	Description
892	June 15, 1950	Petition of W. G. Welbon, et al., for Payment of Interest on First and Refunding Mortgage Bonds.
893	June 26, 1950	Answer of Atlantic Coast Line Railroad Company to Petition of W. G. Welbon, et al., for Payment of Interest.
896	November 10, 1950	Answer of First Mortgage Trustees to Petition of W. G. Welbon, et al., for Payment of Interest.
913	March 28, 1951	Application for Authority to Increase Amount to Be Expended for Additions and Betterments for the Year 1951.
914	March 30, 1951	Answer of Atlantic Coast Line Railroad Company to Trustees' Application Respecting General Additions and Betterments.
915	April 3, 1951	Order Respecting General Additions and Betterments for the Year 1951.
920	April 17, 1951	Report of Additions and Betterments During the Year 1948.
929	February 19, 1949	Petition of W. G. Welbon, et al., for Leave to Intervene.
930	August 1, 1950	Petition of W. R. Huggins, et al., for Leave to Intervene.
931	June 25, 1951	Order Permitting Interventions of W. G. Welbon, et al., and W. R. Huggins, et al.
932	June 27, 1951	Order Granting Motions of Florida Railroad and Public Utilities Commission to Strike Portions of Answers.

BLEED THROUGH

Number	Date of Filing (as indicated in printed Court record)	Description
941	August 20, 1951	Application of Trustees for Authority to Purchase 5 Additional Diesel Locomotives.
942	September 11, 1951	Answer of Atlantic Coast Line Railroad Company to Petition of Trustees for Authority to Purchase 5 Additional Diesel Locomotives.
943	September 11, 1951	Order Authorizing Trustees to Purchase 5 Additional Diesel Locomotives.
944	August 20, 1951	Application of Trustees for Authority to Execute Lease, Construct Tracks and Purchase 75 Hopper Cars, to Serve Lehigh Portland Cement Company.
945	September 11, 1951	Answer of Atlantic Coast Line Railroad Company Respecting Facilities to Serve Lehigh Portland Cement Company.
946	September 11, 1951	Order Authorizing Trustees to Execute Lease, Construct Tracks and Purchase 75 Hopper Cars, to Serve Lehigh Portland Cement Company.
954	September 18, 1951	Application of Trustees for Authority to Expend Additional Amounts for Extraordinary Additions and Betterments During Year 1951.
955	October 2, 1951	Answer of Atlantic Coast Line Railroad Company to Trustees' Application Respecting Additional Additions and Betterments During Year 1951.

Number	Date of Filing (as indicated in printed Court record)	Description
956	October 3, 1951	Order AuthorizingTrustees to Expend Additional Amounts for Extraordinary Additions and Betterments During Year 1951.
957	September 28, 1951	Motion of Florida Railroad and Public Utilities Commission, for Summary Judgment.
959	October 9, 1951	Application of Trustees for Advice and Direction with Respect to Payment of First Mortgage Interest Due December 1, 1951.
960	October 24, 1951	Order Authorizing Payment of First Mortgage Interest Due December 1, 1951.
964	November 2, 1951	Order Fixing Time Within Which Claims for Fees and Expenses Incident to Reorganization, May Be Filed.
967	November 21, 1951	Order Authorizing Atlantic Coast Line Railroad Company to Defer Filing Claim for Expenses and Fees Until Further Order of Court.
969	December 13, 1951	Petitions of S. A. Lynch, et al. and Their Counsel and Engineers for Allowance of Fees and Expenses.
970	December 13, 1951	Petition of First and Refunding Mortgage Trustees for Allowance of Fees and Expenses.
971	December 14, 1951	Application of W. R. Higgins, et al., for Allowance of Fees and Expenses.

BLEED THROUGH

Number	Date of Filing (as indicated in printed Court record)	Description
972	December 14, 1951	Petition of F. K. Conn et al., and Counsel for Allowance of Fees and Expenses.
973	December 14, 1951	Petition of First Mortgage Trustees for Allowance of Fees and Expenses.
974	December 14, 1951	Petition of Deposit Committee for Allowance of Fees and Expenses.
975	December 15, 1951	Petition of Counsel for St. Joe Paper Company for Allowance of Fees and Expenses.
976	December 15, 1951	Petition of W. G. Welbon, et al., and their Counsel, for Allowance of Fees and Expenses.
977	December 29, 1951	Petition of Railway Labor Executives' Association for Allowance of Fees and Expenses.
979	December 18, 1951	Application of Withdrawal of Milam, McIlvaine, Carroll and Wattles as Counsel for Lynch Interests.
980	December 18, 1951	Order Authorizing Milam, McIlvaine, Carroll and Wattles to Withdraw as Counsel for Lynch Interests.
981	December 27, 1951	Petition of duPont Trustees for Leave to Intervene.
982	January 2, 1952	Order Permitting Intervention of duPont Trustees.
994	December 28, 1951	Application of Trustees for Authority to Purchase 100 Gondola Cars.

Number	Date of Filing (as indicated in printed Court record)	Description
995	January 2, 1952	Order Authorizing Trustees to Purchase 100 Gondola Cars.
999	January 8, 1952	Praecipe for Appearance of J. Turner Butler, as Attorney for Lynch Interests.

52. The several documents, each entitled "MOTION BY PARTY IN INTEREST TO DISMISS THE REORGANIZATION PROCEEDING", filed on the dates hereinafter specified, purporting to bear the following signatures and alleging that the several signers of the documents are respectively the owners and holders of the principal amounts of the First and Refunding Mortgage 5% Bonds of the Debtor as follows:

Date of Filing 1952	Name and Address	Amount
Jan. 25	R. E. McNeil, Jr. 52 Wayside Place, Montclair, N. J.	$ 3,000.00
Jan. 31	Jeanette Kessel c/o Correan & Co., 63 Wall St., N. Y. 5	100,000.00
Jan. 31	E. H. Hofmann c/o Correan & Co., 63 Wall St., N. Y. C.	25,000.00
Jan. 31	Irving Gordon & Associates c/o Griental & Co., 25 Broad St., N. Y. C.	50,000.00
Jan. 31	Henry W. Dew 3420 Pine St., Jacksonville, Fla.	22,000.00
Feb. 1	John H. Moore 411 Carolina Road, Towson 4, Md.	10,000.00

BLEED THROUGH

Date of Filing 1952	Name and Address	Amount
Feb.	1—Charles B. Quarles 3812 Fordham Road, Washington 16, D. C.	5,000,000
Feb.	1—Jacob Shientaq c/o Correan & Co., 63 Wall St., N. Y. C.	10,000.00
Feb.	1—Thos. L. Eggleston, Jr. 2801 Adams Mill Rd., N. W., Washington 9, D. C.	50,000.00
Feb.	1—Martin W. Hysong 1300 N St., N. W., Washington, D. C.	10,000.00
Feb.	1—Bancroft T. Foley 2020 Eye St., N. W., Washington, D. C.	130,000.00
Feb.	1—Hercer Realty Corporation Arthur Felber, Vice-President 250 West 57th St., New York 19, N. Y.	50,000.00
Feb.	1—Dr. Roy Upham 45 East 74th St., N. Y. 2, N. Y.	5,000.00
Feb.	2—Vaughan Huse Annapolis, Maryland	5,000.00
Feb.	2—Richard Rosso c/o Correan & Co., 63 Wall St., N. Y. C.	20,000.00
Feb.	4—Margaret M. Knabinet 1007 No. Liberty St., Arlington, Va.	20,000.00

Date of Filing 1952	Name and Address	Amount
Feb. 4	John J. Burnett 106 Trumbull Road, Manhasset, N. Y.	5,000.00
Feb. 4	Joseph H. Morris 2702 Cottage Grove, Des Moines 11, Ia.	20,000.00
Feb. 4	George S. Marsh Winter Park, Florida	110,000.00
Feb. 4	Miss Anne Marsh P. O. Box 163, 1020 Palmer Ave., Winter Park, Florida	20,000.00
Feb. 5	Leo J. Goldboel 6 E. Eagle St.	65,000.00
Feb. 5	David M. Schlorsberg 2915 Chelsea Terrace, Baltimore, Md.	15,000.00
Feb. 5	Herbert Ermold 915—36th Street, Baltimore 11, Md.	10,000.00
Feb. 5	Isador B. Terrell 1301 Tower Bldg., Baltimore, Md.	20,000.00
Feb. 5	Morris Rodman 18th & G St., N. W., Washington, D. C.	25,000.00
Feb. 5	Harry Rosenthal 3211 Fallstaff Rd., Baltimore 15, Md.	5,000.00
Feb. 5	Nathan Rief 2403 Talbott Rd., Baltimore 16, Md.	15,000.00
Feb. 5	B. Harris Henderson 231 St. Paul Place, Baltimore 2, Md.	50,000.00

BLEED THROUGH

Date of Filing 1952	Name and Address	Amount
Feb. 5	Carroll Rosenbloom Drawer 920, Lynchburg, Virginia	65,000.00
Feb. 5	Irma W. Kidd 122 Taplow Road, Baltimore 12, Md.	15,000.00
Feb. 5	Otelia M. Whitmer 804 Mercantile Trust Bldg., Baltimore, Md.	10,000.00
Feb. 5	Samuel Millsbone Park Plaza Hotel, Baltimore 1, Md.	35,000.00
Feb. 5	Anlier B. Stewart 416 Woodlawn Road, Baltimore 10, Md.	40,000.00
Feb. 5	J. Jackson Smith 11 E. Mt. Royal Ave., Baltimore, Md.	40,000.00
Feb. 5	Edmund Sobelman 1700 Aiken St., Baltimore 13, Md.	10,000.00
Feb. 5	W. Wallace Walker Medical Arts Bldg., Baltimore, Md.	65,000.00
Feb. 5	Weinberg & Green By Harry J. Green, partner 10 Sight St., Baltimore, Md.	147,000.00
Feb. 5	Jack Felderman 101 Lewison Bldg., Baltimore 1, Md.	55,000.00
Feb. 6	Mary Ross Stewart 416 Woodlawn Rd., Baltimore 10, Md.	17,000.00
Feb. 6	James Eldridge Smith 4004 Greenway, Baltimore 18, Md.	(Not shown)

Date of Filing 1952	Name and Address	Amount
Feb.	6—Mutual Investors Co. 229 E. Wisconsin Ave., Milwaukee 2, Wis.	10,000.00
Feb.	6—Ben Eby 316 Carlisle St., Harrisburg, Pa.	25,000.00
Feb.	7—Othello H. Schroedl Marion G. Schroedl 104 W. Univ. Parkway, Baltimore 10, Md.	5,000.00
Feb.	7—Patricia A. Taylor 778 Fayette St., Cumberland, Md.	5,000.00
Feb.	7—Howard Taylor 778 Fayette St., Cumberland, Md.	30,000.00
Feb.	7—Olive M. Taylor 778 Fayette St., Cumberland, Md.	10,000.00
Feb.	7—Fred Kairys 9710 Continental Ave., Forest Hills, N. Y.	25,000.00
Feb.	7—Bernard Kairys 2705 Queen Anne Rd., Baltimore 16, Md.	60,000.00
Feb.	7—Blanche F. Powell 3713 Chesholm Rd., Baltimore, Md.	12,000.00
Feb.	7—Mrs. Almeina S. Ramseny 4105 Greenway, Baltimore 18, Md.	(Not shown)
Feb.	7—George J. Platt Rt. 2, Lombardy Dr., Manitowac, Wis.	55,000.00
Feb.	8—Louis S. Zimmerman 804 Maryland Trust Bldg., Baltimore 1, Md.	200,000.00

BLEED THROUGH

Date of Filing 1952	Name and Address	Amount
Feb. 8	—J. L. Sharih Port St. Joe, Florida	22,000.00
Feb. 8	—Henry C. Needles and Nancy Lee Needles Cape May, New Jersey	2,000.00
Feb. 8	—Leora W. Needles Cape May, New Jersey	3,000.00
Feb. 8	—Frank Applestein 787 Washington Blvd., Baltimore, Md.	6,448.25
Feb. 8	—The Florida National Bank of Jacksonville as Trustee U/A dated 8/1/38 with Henry W. Dew for benefit of Henry W. Dew, Jr. c/o Trust Dept., The Florida Natl. Bk. Jacksonville 1, Florida	4,000.00
Feb. 8	—The Florida National Bank of Jacksonville as Trustee U/A dated 8/1/38 with Henry W. Drew for benefit of Elizabeth Ward Dew c/o Trust Dept., The Florida Natl. Bk. Jacksonville 1, Florida	4,000.00
Feb. 8	—The Florida National Bank of Jacksonville as Trustee U/A dated 8/1/38 with Henry W. Dew for benefit of Sarah B. Dew c/o Trust Dept., The Florida Natl. Bk. Jacksonville 1, Florida	4,000.00

Date of Filing 1952	Name and Address	Amount
Feb. 8	The Florida National Bank of Jacksonville as Trustee U/A dated 8/1/38 with Henry W. Dew for benefit of Virginia C. Dew c/o Trust Dept., The Florida Natl. Bk. Jacksonville 1, Florida	4,000.00
Feb. 8	The Florida National Bank of Jacksonville as Trustee U/A dated 8/1/38 with Henry W. Dew for benefit of Mary B. Dew c/o Trust Dept., The Florida Natl. Bk. Jacksonville 1, Florida	4,000.00
Feb. 8	The Florida National Bank of Jacksonville as Trustee of Henry W. Dew Life Insurance Trust c/o Trust Dept., The Florida Natl. Bk. Jacksonville 1, Florida	5,000.00
Feb. 8	Jessie Ball duPont 1511 Barnett Bldg., Jacksonville, Fla.	110,000.00
Feb. 8	Ada M. Bremer 2923 Olga Place, Jacksonville, Fla.	11,000.00
Feb. 8	Edward Ball P. O. Box 191, Tallahassee, Florida	127,000.00
Feb. 8	Harry H. Saunders Port St. Joe, Florida	32,000.00

BLEED THROUGH

Date of Filing 1932	Name and Address	Amount
Feb. 8	Ronald L. Main 4442 San Jose Blvd., Jacksonville, Fla.	40,000,00
Feb. 8	Mrs. Irene Walah 847 Sorrento Rd., Jacksonville, Fla.	22,000.00
Feb. 8	W. T. Edwards 1920 Montgomery Pl., Jacksonville, Fla.	32,000.00
Feb. 8	Stewart Brown Boyce 6 South Calvert St., Baltimore 2, Md.	400,000.00
Feb. 8	G. L. Armour 50 Union Square, New York City, N. Y.	20,000.00
Feb. 8	Charles S. Lubin 51 Chambers St., New York 7, N. Y.	2.000.00
Feb. 11	H. E. Wolf St. Augustine, Florida	200,000.00
Feb. 11	A. P. Shoemaker, Jr. Edgewater Park, Mississippi	20,000.00
Feb. 11	Jessie Ball duPont Edward Ball and Albert Dent The Florida National Bank of Jacksonville by its Asst. Vice Pres. & Asst. Trust Officer as Co-Trustees under will & Codicils of Alfred I. duPont 1511 Barnett National Bank Bldg., Jacksonville, Florida	1,993,000.00

Date of Filing 1952	Name and Address	Amount
Feb. 15—	The Real Company t/a R. E. Ottenheimer 157 Landweln Lane, Baltimore, Md.	3,000.00

53. Opinion of the Honorable Louie W. Strum, United States Circuit Judge sitting as District Judge *pro hac vice,* dated and filed March 11, 1952.

54. Order of the Honorable Louie W. Strum, United States Circuit Judge sitting as District Judge *pro hac vice,* dated and filed March 11, 1952, which among other things, disapproved the 1951 Plan and ordered that effective June 1, 1952 this proceeding be dismissed and Scott M. Loftin and John W. Martin, as Reorganization Trustees, shall turn over to Scott M. Loftin and John W. Martin as Equity Receivers in Case No. 757-Eq., all property and records of the Debtor then in their possession.

55. Notice of Appeal of Atlantic Coast Line Railroad Company filed April 4, 1952 from the order of the Honorable Louie W. Strum, United States Circuit Judge sitting as District Judge *pro hac vice,* dated and filed March 11, 1952, referred to in the preceding paragraph.

56. Notice of Appeal of Atlantic Coast Line Railroad Company filed April 25, 1952, from the order of the Honorable Louie W. Strum, United States Circuit Judge sitting as District Judge *pro hac vice,* dated and filed March 11, 1952, referred to in paragraph 54.

57. Motion of Atlantic Coast Line Railroad Company to Amend Judgment, dated and filed March 20, 1952.

58. Order of the Honorable Louie W. Strum, United States Circuit Judge sitting as District Judge *pro hac vice,* dated and filed herein, April 7, 1952, denying Motion to Amend Judgment and fixing amount of Supersedeas Bond.

BLEED THROUGH

59. Supersedeas Bond dated and filed herein May 9, 1952.

60. Order of the Honorable Louie W. Strum, United States Circuit Judge sitting as District Judge *pro hac vice*, dated April 28, 1952, extending the time to file the Record on Appeal to June 16, 1952.

61. This Designation.

62. Statement of Points of Atlantic Coast Line Railroad Company.

Dated, Jacksonville, Florida, May 26, 1952.

HOWELL AND HOWELL
Atlantic National Bank Building
Jacksonville, Florida

By (signed) CHARLES C. HOWELL, JR.
A Partner

CHARLES COOK HOWELL
Atlantic Coast Line Railroad Company
Wilmington, North Carolina

ALEXANDER & GREEN
120 Broadway
New York, N. Y.

By EDWARD W. BOURNE
A Partner

Attorneys for Atlantic Coast Line
Railroad Company

Endorsed:

"Filed May 26, 1952, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

Statement of Points of Atlantic Coast Line Railroad Company.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J

Atlantic Coast Line Railroad Company, having heretofore filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the order herein dated and filed March 11, 1952, whereby this Court, among other things, disapproved the plan of reorganization of the Debtor (hereinafter called "the Plan of Reorganization") which is referred to in said order as having been approved by the Interstate Commerce Commission July 12, 1951 and certified to this Court October 25, 1951, and whereby this Court ordered that, effective June 1, 1952, this proceeding be dismissed and Scott M. Loftin and John W. Martin, as Reorganization Trustees, shall turn over to Scott M. Loftin and John W. Martin, as Equity Receivers in Case No. 757-Eq., all property and records of the Debtor then in their possession, and from each and every part of said order, hereby makes the following statement of points upon which it intends to rely upon said appeal:

1. The Court erred in refusing to approve the Plan of Reorganization.

BLEED THROUGH

Statement of Points of Atlantic Coast Line Railroad Company.

2. The Court should have made the findings with respect to the Plan of Reorganization specified in subsection (e) of Section 77 of the Bankruptcy Act.

3. The Court erred in finding that the Plan of Reorganization "is neither fair nor equitable, nor does it afford due recognition to the rights of the 5% bondholders".

4. The Commission's valuation of the property of the Debtor dealt with in the Plan of Reorganization, in terms of cash and securities of Atlantic Coast Line Railroad Company provided for by the Plan of Reorganization, was made in conformity with the statutory mandates and is supported by material evidence.

5. The finding of the Commission that the Plan of Reorganization will be compatible with the public interest was made in conformity with the statutory mandates and is supported by material evidence.

6. The Court erred in finding that "the Commission's findings as to public interest are wholly unsupported by evidence".

7. The Court erred in paragraphs 2, 3 and 4 of said order, and each of them, in directing that the proceedings be dismissed effective June 1, 1952; in undertaking to say what would be done in the equity receivership; and in directing a turnover of the property and records of the debtor to the equity receivers.

8. The Court erred in finding that there is "undue delay in a reasonably expeditious reorganization of the debtor".

9. In support of the order the Court filed an opinion which, with respect to matters of fact, contains many erro-

neous statements and many statements which are so incomplete as to convey an erroneous impression and omits any reference to many facts which were material to the issues before the Court and, as to matters of law, contains statements and rulings which are inconsistent with the law of this case as laid down by the Court of Appeals on the prior appeal herein relating to a plan of reorganization previously approved by the Commission, also inconsistent with the provisions of Section 77 of the Bankruptcy Act and other Federal Statutes as interpreted by the Supreme Court of the United States, and even inconsistent with the statements in the opinion as to the law:

> "This Court fully recognizes the doctrine that in railroad reorganizations under Section 77, Congress 'placed leadership in the Commission, subject to a degree of participation by the Court.' Thus, valuation of the property, the amount and character of capitalization, and the determination of whether or not the plan is compatible with the public interest, are confided to the Commission. Its determination of these matters is conclusive when reached 'with material evidence to support the conclusion and in accordance with legal standards.'(8) The Court is not authorized to independently value the property, nor to formulate a plan of its own, nor to review the Commission for mere error. But the determination by the Commission of the matters above mentioned must be in accordance with the mandates of the statute. Whether or not, in valuing the property and in determining the public interest, the Commission has acted upon substantial evidence and in accordance with statutory directions is open to judicial review. Ecker *v.* Western Pac. R. Corp., 318 U. S. 448, 477, 87 L. Ed. 892, 934.
>
> NOTE (8): Ecker v. Western Pac. R. Corp., 318 U. S. 448, 87 L. Ed. 892; R. F. C. *v.* D. & R. G. W. R.

BLEED THROUGH

Co., 328 U. S. 495, 90 L. Ed. 1400; Institutional Investors *v.* Chicago M & St. P. Ry Co., 318 U. S. 523, 87 L. Ed. 959; Palmer *v.* Massachusetts, 308 U. S. 79, 84 L. Ed. 93."

10. The Court erred in failing to comply with the request for findings which was made by Atlantic Coast Line Railroad Company in its brief dated February 4, 1952 on the approval of the Plan of Reorganization and which was repeated in a summary of principal points dated February 15, 1952, filed by the Atlantic Coast Line with the Court at the suggestion of the Court. Said request for findings read as follows:

> "We ask the Court to deal specifically with the subject of the 'fair market values' of the securities which would be issued under (a) the Plan approved by the Commission (b) the Commission's hypothetical internal plan of reorganization, having the security structure specified by the Commission in the last paragraph on page 212 of the Court Record, and (c) the St. Joe Paper Company plan. We ask the Court to indicate clearly whether, in acting upon the Commission's Plan, it has considered itself bound by the the Commission's 'fair market value' findings. If it has not, we ask the Court to make its own 'fair market value' findings. If the Court should make its own 'fair market value' findings, we ask that the same be made with respect to each issue of securities which would be issuable under the respective plans, as the Commission did. We make these requests so that the Court's views as to the 'fair market values' which the Florida East Coast creditors would receive under the three different plans may be available to the Court of Appeals in the event of an appeal."

Statement of Points of Atlantic Coast Line Railroad Company.

The Court otherwise erred in failing to make findings on other matters of fact.

11. The Court's opinion contains no discussion of or reference to any objections to or disadvantages of a dismissal of the reorganization proceeding despite the fact that objections and disadvantages were pointed out to the Court in detail.

12. The Court should have approved the Plan of Reorganization.

Dated, Jacksonville, Florida, May 26, 1952.

HOWELL AND HOWELL,
Atlantic National Bank Building,
Jacksonville, Florida,

By (signed) CHARLES C. HOWELL, JR.,
A Partner.

CHARLES COOK HOWELL,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

ALEXANDER & GREEN,
120 Broadway,
New York, N. Y.,

By EDWARD W. BOURNE,
A Partner.

Attorneys for Atlantic Coast Line Railroad Company

Endorsed:

"Filed May 26, 1952, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

BLEED THROUGH

Request of Atlantic Coast Line Railroad Company that Specified Portions of the Record on Appeal be Printed Prior to its Transmission to the Court of Appeals.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Clerk of the above named Court:

You are hereby requested, pursuant to paragraph 10 of Rule 23 of the Rules of the United States Court of Appeals for the Fifth Circuit, to cause the following specified portions of the record on the appeal from the Order filed herein on March 11, 1952, whereby the above named Court, among other things, disapproved the plan of reorganization of the Debtor which is referred to in said order as having been approved by the Interstate Commerce Commission July 12, 1951 and certified to the Court October 25, 1951, to be printed or photo-lithographed prior to its transmission to said Court of Appeals, the references herein to the "Designation" being to the "Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company", dated May 26, 1952:

1. Copies of the Reports of the Interstate Commerce Commission dated July 12, 1951 and October 25, 1951, as printed in the Reports of the Interstate Commerce Commission entitled "Florida East Coast

Request of Atlantic Coast Line Railroad Company that Specified Portions of the Record on Appeal be Printed Prior to its Transmission to the Court of Appeals.

Railway Company Reorganization", 282 I. C. C. 81-191 and 282 I. C. C. 195-226 (including Appendix).

2. The following items of the Designation: 48, 53, 54, 55, 60, 61, 62.

3. A copy of the Motion of R. E. McNeill, Jr., 52 Wayside Place, Montclair, New Jersey, referred to in item 52 of the Designation, filed January 25, 1952.

4. This Request of Atlantic Coast Line Railroad Company that Specified Portions of the Record on Appeal be Printed Prior to its Transmission to the Court of Appeals.

Dated, Jacksonville, Florida, June 10, 1952.

HOWELL AND HOWELL
Atlantic National Bank Building
Jacksonville, Florida

By /s/ CHARLES C. HOWELL, JR.
A Partner

CHARLES COOK HOWELL
Atlantic Coast Line Railroad Company
Wilmington, North Carolina

ALEXANDER & GREEN
120 Broadway,
New York, N. Y.

By /s/ EDWARD W. BOURNE
A Partner

Attorneys for Atlantic Coast Line Railroad Company

Endorsed:

"Filed June 16, 1952, Jacksonville, Fla. Edwin R. Williams, Clerk."

BLEED THROUGH

UNITED STATES OF AMERICA)
) ss.
SOUTHERN DISTRICT OF FLORIDA)

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered as follows: VOLUME I, Fifth Supplemental Report of the Interstate Commerce Commission, Pages 81 through 191, inclusive, Sixth Supplemental Report of the Interstate Commerce Commission, Pages 195 through 226, inclusive, and Pages 1 through 236, inclusive; VOLUME II, Pages 237 through 715, inclusive, and VOLUME III, Pages unnumbered but containing Lynch Interests Exhibits Nos. 1-A to 22-A, 25-A, 26-A, 27-A and 28; St. Joe Paper Company Exhibits A to Z and AA to DD, Deposit Committee Exhibits Nos. 1 to 8, and Atlantic Coast Line Railroad Company Exhibits Nos. 1 to 10 and A, contain a true copy of all such papers and proceedings in the cause of Florida East Coast Railway Company, Debtor, Atlantic Coast Line Railroad Company, Appellant, vs. St. Joe Paper Company, et al., Appellees, as appear upon the records and files of my office which have been designated by the agreement of the parties to be printed prior to the transmission of the original transcript of record to the United States Court of Appeals.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Jacksonville, Florida, on this the 30th day of June, A. D. 1952.

(SEAL) (Signed) EDWIN R. WILLIAMS

EDWIN R. WILLIAMS, CLERK
U. S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA.

POOR COPY

BLEED THROUGH

CLERK'S CERTIFICATE,
UNITED STATES OF AMERICA,
UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT.

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 716 to 734 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 14163, wherein In the Matter of FLORIDA EAST COAST RAILWAY COMPANY, Debtor - ATLANTIC COAST LINE RAILROAD COMPANY is appellant, and ST. JOE PAPER COMPANY, ET AL., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volumes I. and II., numbered from 1 to 715, and Volume III., Pages unnumbered but containing Lynch Interests Exhibits Nos. 1-A to 22-A, 25-A, 26-A, 27-A and 28; St. Joe Paper Company Exhibits A to Z and AA to DD, Deposit Committee Exhibits Nos. 1 to 8, and Atlantic Coast Line Railroad Company Exhibits Nos. 1 to 10 and A, are identical with the printed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 19th day of February, A. D. 1953.

Oakley F. Dodd

Clerk of the United States Court
of Appeals, Fifth Circuit.

POOR COPY